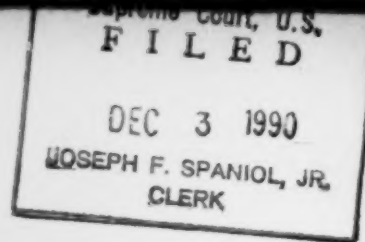


①
90-872

No. _____



In The
Supreme Court Of The United States

October Term, 1990

YELLOW BUS LINES, INC.

Petitioner

v.

DRIVERS, CHAUFFEURS & HELPERS
Local Union 639, et. al.

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Thomas G. Corcoran, Jr.
Counsel of Record
Henry M. Lloyd
Berliner, Corcoran, & Rowe
1101 17th Street N.W.
Washington, D.C. 20036
(202) 293-5555

G. Robert Blakey
Notre Dame Law School
Notre Dame, Indiana 46556
(219) 239-5717
Attorneys for Petitioner

QUESTIONS PRESENTED

Yellow Bus, Inc., was struck by its union employees in a violent recognition strike sponsored by Teamsters Local No. 639. The company sued the union for damages to its business and property during the strike and thereafter under RICO, 18 U.S.C. § 1961 et. seq.

This litigation raises four critically important issues under 18 U.S.C. § 1962(c):

(1) May a striking union be the "person" sued by a struck company and, at the same time, the "enterprise" whose "affairs" are "conducted" by a "pattern of racketeering activity", "arson" and "extortion"?

(2) Alternatively, may a striking union be "a person" "associated with" a struck company, the "enterprise," and, if so, may the union "indirectly" "participate" in the "conduct" of the company's "affairs" by directing

"racketeering acts" of "arson" and "extortion" against it?

(3) May "acts" of "racketeering activity" not directed toward the struck company be included in the "pattern of racketeering activity" constituting the "violation" based on which the struck company sues the striking union?

(4) May construing the statute to answer each of these questions in the negative be squared with its liberal construction directive?

The Court of Appeals for the District of Columbia Circuit, in a panel opinion and sitting en banc, answered these issues in the negative.

This Petition seeks review of these judgments.

"characterizing" and "action" and

"action" and "action"

(3) any "action" of "characterizing"

activity, not directed toward the same

company as indicated in the "action" of

characterizing activity, constituting the

"action" of "action" of "action"

company and the action of "action"

(4) any "action" of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

action and of "action" of "action"

List of Parties

The following parties, exclusive of amici, appeared below:

Yellow Bus Lines, Inc.* (formerly a
school and charter bus company)

Maria Triggs

Paula Westgate

Peter McKinnon

Drivers, Chauffeurs & Helpers

Local 639, International Brotherhood
of Teamsters

James F. Woodward

Michael DiPalermo

District of Columbia

*Petitioner Yellow Bus has no parent companies or subsidiaries to list pursuant to Rule 29.1.

List of Parties

The following parties, who have been admitted to the

appeal, are listed below:

Yellow and Green, Inc., (Complainant)

and the following respondents:

Green, Inc.

Green, Inc.

Green, Inc.

Green, Inc., (Respondent)

Green, Inc., (Respondent)

Green, Inc.

Green, Inc.

Green, Inc.

Green, Inc.

Yellow and Green, Inc., (Complainant)

and the following respondents:

Green, Inc.

TABLE OF CONTENTS

	<u>PAGE</u>
QUESTIONS PRESENTED	1
LIST OF PARTIES	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
SUMMARY OF REASONS FOR GRANTING THE WRIT	8
REASONS FOR GRANTING THE WRIT	
1. This Court Must Review and Reconcile Conflicting Circuit Court Decisions On The Construction of RICO, An Important Federal Avenue of Relief For Victims of Aggravated Forms of Criminal Conduct in the Areas of Organized Crime, Political Corruption, White-Collar Crime, Terrorism and Violent Groups Generally	9

2.	Yellow Bus, Inc.'s Petition Affords An Excellent Vehicle to Review Several Conflicting Circuit Court of Appeal Decisions	12
----	--	----

CONCLUSION	28
----------------------	----

THE
UNIVERSITY OF
MICHIGAN
LIBRARY
ANN ARBOR
MICHIGAN
48106-1000

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>SUPREME COURT</u>	
<u>Braswell v. United States,</u> 487 U.S. 99 (1988)	14
<u>Blue Chip Stamps v. Manor Drug Store</u> 421 U.S. 723 (1975)	28
<u>Fort Wayne Books, Inc. v. Indiana,</u> 109 S. Ct. 916 (1989)	24
<u>Gebardi v. United States,</u> 287 U.S. 112 (1932)	16
<u>Herman & McLean v. Huddleston,</u> 455 U.S. 375 (1983)	19
<u>H. J. Inc. v. Northwestern Bell</u> <u>Telephone Co.,</u>	11, 21,
109 S. Ct. 2893 (1989)	27, 28
<u>Iannelli v. United States,</u> 420 U.S. 770 (1985)	20
<u>New York Cent. & Hudson River</u> <u>R.R. v. United States,</u> 212 U.S. 481 (1909)	15
<u>Russello v. United States,</u> 465 U.S. 576 (1983)	10, 21
<u>Sanabria v. United States,</u> 437 U.S. 54 (1978)	17
<u>Sedima, S.P.R.L. v. Imrex,</u>	11, 21,
473 U.S. 479 (1985)	27, 28
<u>S.E.C. v. National Securities, Co.,</u> 393 U.S. 453 (1969)	19

TABLE OF CONTENTS

PAGE

CASES

GENERAL NOTE

General Note 1

1917-18 1

General Note 2

1918-19 2

General Note 3

1919-20 3

General Note 4

1920-21 4

General Note 5

1921-22 5

General Note 6

1922-23 6

General Note 7

1923-24 7

General Note 8

1924-25 8

General Note 9

1925-26 9

General Note 10

1926-27 10

General Note 11

1927-28 11

General Note 12

1928-29 12

United States v. Batchelder,
442 U.S. 114 (1979) 21, 24

United States v. Powell,
423 U.S. 87 (1975) 23

United States v. Ragen,
314 U.S. 513 (1942) 23

United States v. Turkette,
452 U.S. 576 (1981) 11, 19

Village of Hoffman Estates v.
Flipside Hoffman Estates, Inc.,
455 U.S. 489 (1982) 23

COURT OF APPEALS

Bank of America v. Touche
Ross & Co.,
782 F.2d 966 (11th Cir. 1986) . . . 25

Bennett v. Berg,
710 F.2d 1361 (8th Cir.), cert
denied, 464 U.S. 1008 (1983) . . . 16

B. F. Hirsch v. Enright Refining Co.,
751 F.2d 628 (3rd Cir. 1984) . . . 15

Blake v. Dierdorff,
856 F.2d 1356 (9th Cir. 1988) . . . 25

Haroco v. American Nat'l Banks &
Trust Co. of Chicago,
747 F.2d 384 (7th Cir. 1984),
aff'd, 473 U.S. 606 (1985) . . . 19, 21

Landry v. Airline Pilots
Association Int'l,
901 F.2d 404 (5th Cir. 1990) . . . 27

Marshall & Ilsley Trust Co. v. Pate,
819 F.2d 806 (7th Cir. 1987) . . . 27

United States v. [illegible]
443 U.S. 114 (1979) 21 22

United States v. [illegible]
443 U.S. 57 (1979) 23

United States v. [illegible]
418 U.S. 512 (1974) 24

United States v. [illegible]
452 U.S. 586 (1981) 25

Williams v. [illegible]
432 U.S. 413 (1977) 26

Other cases

Bank of America v. [illegible]
435 U.S. 321 (1978) 27

Booth v. [illegible]
482 U.S. 169 (1987) 28

U.S. v. [illegible]
401 U.S. 1 (1971) 29

Stacy v. [illegible]
434 U.S. 349 (1978) 30

United v. [illegible]
434 U.S. 349 (1978) 31

London v. [illegible]
401 U.S. 1 (1971) 32

Booth v. [illegible]
482 U.S. 169 (1987) 33

Schofield v. First Commodity Corp.
of Boston,

783 F.2d 28 (1st Cir. 1986) . . . 15

Sedima S.P.R L. v. Imrex,

741 F.2d 482 (2nd Cir. 1984),
rev'd, 473 U.S. 479 (1985) . . . 4

Tarrant v. Ponte,

751 F.2d 459 (1st Cir. 1985) . . . 21

Town of Kearny v. Hudson Meadows

Urban Renewal Corp., 829 F.2d
1263 (3rd Cir. 1987) 27

United States v. Angiulo,

897 F.2d 1169 (1st Cir. 1990) . . . 23

United States v. Hartley,

678 F.2d 961 (11th Cir. 1982),
cert. denied, 459 U.S. 1170
(1983) 13

United States v. Local 560,

780 F.2d 267 (3rd Cir. 1985),
cert. denied, 476 U.S. 1140
(1986) 15

United States v. Tillen,

906 F.2d 814 (2nd Cir. 1990) . . . 16

FEDERAL STATUTES

18 U.S.C. § 1961 (4) 18

P.L. 91-452, 84 Stat. 923 (1970) 9, 18

84 Stat. 947 (1970) 19, 21

Schubert v. First Community Corp.

of Boston

783 F.2d 26 (1st Cir. 1986)

Shelton v. E. J. v. Lantz

711 F.2d 128 (1st Cir. 1983)

783 F.2d 26 (1st Cir. 1986)

Trotter v. People

783 F.2d 128 (1st Cir. 1986)

Town of New York v. United States

783 F.2d 128 (1st Cir. 1986)

783 F.2d 128 (1st Cir. 1986)

United States v. [illegible]

783 F.2d 128 (1st Cir. 1986)

783 F.2d 128 (1st Cir. 1986)

United States v. [illegible]

783 F.2d 128 (1st Cir. 1986)

783 F.2d 128 (1st Cir. 1986)

United States v. [illegible]

783 F.2d 128 (1st Cir. 1986)

783 F.2d 128 (1st Cir. 1986)

United States v. [illegible]

783 F.2d 128 (1st Cir. 1986)

783 F.2d 128 (1st Cir. 1986)

[illegible]

[illegible]

[illegible]

[illegible]

LEGISLATIVE MATERIALS

Federal Government's Use Of The RICO Statute and Other Efforts Against Organized Crime,

S. Rep. No. 101-407, 101st Cong., 2nd Sess. (1990)	10
H. R. Rep. No. 1088, 100th Cong., 2nd Sess. (1988)	25
H. R. Rep. No. 1549, 91st Cong., 2nd Sess. (1970)	17
<u>Oversight Civil RICO: Hearings Sen.</u> Jud. Comm., 99th Cong., 1st Sess. (1985)	10
<u>Prosecuting Fraud in The Thrift Industry Hearing before The House</u> Subcomm. on Crim. Justice, 101st Cong., 1st Sess. (1989)	26
S. Rep. No. 91-617, 91st Cong., 1st Sess. (1969)	17
S. Rep. No. 101-269, 101st Cong., 2nd Sess (1990)	11

MISCELLANEOUS

<u>Blakey, Rico Civil Action in Context, 58 Notre Dame L.</u> Rev. 245 (1982)	22
<u>Blakey & Cessar, Equitable Relief Under Civil RICO, 62 Notre Dame</u> L. Rev. 526 (1987)	14

EXHIBITIVE MATERIALS

Federal Government's Use of the
Radio Spectrum and Other Matters

Administrative Organization
S. Rep. No. 101-501, 101st Cong.

101st Cong. (1990)

H. R. Rep. No. 101-501, 101st Cong.
101st Cong. (1990)

H. R. Rep. No. 101-501, 101st Cong.
101st Cong. (1990)

Administrative Organization
S. Rep. No. 101-501, 101st Cong.

101st Cong. (1990)

Administrative Organization
S. Rep. No. 101-501, 101st Cong.

101st Cong. (1990)

H. R. Rep. No. 101-501, 101st Cong.
101st Cong. (1990)

H. R. Rep. No. 101-501, 101st Cong.
101st Cong. (1990)

Administrative Organization
S. Rep. No. 101-501, 101st Cong.

101st Cong. (1990)

Administrative Organization
S. Rep. No. 101-501, 101st Cong.

101st Cong. (1990)

<u>Blakey and Perry, An Analysis of The Myths That Bolster Efforts To Rewrite RICO and the Various Proposals Per Reform: "Mother of God--Is This The End of RICO?"</u>	10, 11
43 Vanderbilt L. Rev. 851 (1990).	14, 24
 Blakey, "Is Pattern Void For Vagueness?", 5 Civil RICO Report 6 (Dec. 12, 1989)	20
 6 Civil RICO Report 1 (Sept 25, 1990)	11
 Conyers, <u>Corporate and White-Collar Crime</u> , 17 Am. Crim. L. Rev. 287 (1980)	14
 R. Dickerson, <u>Fundamentals of Legal Drafting</u> (1965)	20
 W. Hurst, <u>The Growth of American Law</u> (1950)	22
 N. Y. Times, Feb. 7, 1989, at D8, col. 1	26
 N. Y. Times, Oct. 22, 1990, p. 1 col. 1	10
 N. Y. Times, Nov. 15, 1990, at C1, Col. 6	26
 Note, <u>Civil RICO: The Temptation and Impropriety of Judicial Restriction</u> , 95 Harv. L. Rev. (1982)	28

STONY and BERRY. An analysis of
the water from the various
localities and the various
seasons for calcium
and magnesium content.
No. 11
12 13

STONY, the water will be
"hardness" 2-3-4 with calcium
and magnesium.
No. 12
13 14

STONY, the water will be
"hardness" 2-3-4 with calcium
and magnesium.
No. 13
14 15

STONY, the water will be
"hardness" 2-3-4 with calcium
and magnesium.
No. 14
15 16

STONY, the water will be
"hardness" 2-3-4 with calcium
and magnesium.
No. 15
16 17

STONY, the water will be
"hardness" 2-3-4 with calcium
and magnesium.
No. 16
17 18

Note, Innocence by Association:

Entities and The Person--

Enterprise Rule Under RICO,

63 Notre Dame L. Rev. 179

(1988) 13

The Report of the Ad Hoc Civil RICO

Task Force of The A.B.A. Section of

Corporations, Banking and the

Business Law (1985) 13, 14,

. 15

Wall St. J., Nov. 2, 1990,

P. 1, col. 6 25

Webster's Third New Int'l

Dictionary (1961) 17

D. Wigdor, Roscoe Pound:

Philosopher of Law (1974) 22

NOTE: INFORMATION FOR INVESTIGATION

1. Name of person or organization

2. Address of person or organization

3. Date of information received

(1900)

THE REPORT OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

THE BOARD OF THE TO THE BOARD OF

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

YELLOW BUS LINES, INC.
Petitioner,

v.

DRIVERS, CHAUFFEURS, & HELPERS
LOCAL UNION 639, et.al.
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

OPINIONS BELOW

The Court of Appeals opinions are reported at 913 F.2d 848 and 883 F.2d 132. They are reproduced at App. pp. 1-44, 45-102. The District Court opinion is reported at 686 F.Supp. 1, and reproduced at App. pp. 103-121.

JURISDICTION

The en banc Court of Appeals judgment was entered on September 4, 1990. This

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM J. BROWN, JR.

Respondent

vs.

JOHN J. BROWN, JR.

Petitioner

WILLIAM J. BROWN, JR., Respondent, by and through
his undersigned counsel, moves the Court for an order
granting him a writ of habeas corpus, and for an order
directing the release of the Respondent from custody.

Respectfully submitted,

JOHN J. BROWN, JR., Petitioner, by and through
his undersigned counsel, moves the Court for an order
granting him a writ of habeas corpus, and for an order
directing the release of the Respondent from custody.

Respectfully submitted,

JOHN J. BROWN, JR.

WILLIAM J. BROWN, JR., Respondent, by and through
his undersigned counsel, moves the Court for an order
granting him a writ of habeas corpus, and for an order
directing the release of the Respondent from custody.

Petition is timely filed. Jurisdiction is invoked under 28 U.S.C. § 1254(1) and Rule 10.1(a) of this Court.

STATUTORY PROVISION INVOLVED

Title 18, United States Code, in relevant part, provides:

§ 1961. Definitions.

As used in this chapter--

(1) "racketeering activity" means...any act or threat involving...arson [or] extortion...;

X X X

(3) "person" includes any individual or entity...;

(4) "enterprise" includes any individual...or other legal entity, and any union...;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity...

§ 1962. Prohibited activities.

X X X

(c) It shall be unlawful for any person employed by or associated with any enterprise...to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity....

§ 1964. Civil remedies.

X X X

(c) Any person injured in

petition is hereby filed for admission to
judgment under the U. S. C. 2101 and 2102
10.11.11 of this Court.

EXHIBITS SUBMITTED

1. A copy of the petition filed on 10.11.11.

2. A copy of the order of admission.

3. A copy of the order of judgment.

4. A copy of the order of execution.

5. A copy of the order of sale.

6. A copy of the order of distribution.

7. A copy of the order of partition.

8. A copy of the order of appointment.

9. A copy of the order of removal.

10. A copy of the order of setting aside.

11. A copy of the order of stay.

12. A copy of the order of costs.

13. A copy of the order of interest.

14. A copy of the order of damages.

15. A copy of the order of injunction.

16. A copy of the order of specific performance.

17. A copy of the order of rectification.

18. A copy of the order of rescission.

19. A copy of the order of annulment.

20. A copy of the order of declaration.

21. A copy of the order of summary judgment.

22. A copy of the order of summary dismissal.

23. A copy of the order of summary judgment.

24. A copy of the order of summary dismissal.

25. A copy of the order of summary judgment.

26. A copy of the order of summary dismissal.

27. A copy of the order of summary judgment.

28. A copy of the order of summary dismissal.

29. A copy of the order of summary judgment.

30. A copy of the order of summary dismissal.

his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

84 Statutes at Large 947 provides:

Section 904 (a) The provisions of this title shall be liberally construed to effectuate its remedial purposes.

(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

STATEMENT OF THE CASE

Yellow Bus Lines, Inc. ("Yellow Bus") sought damages under 18 U.S.C. § 1964(c) ("RICO") for its injury from a recognition strike, characterized by violence and intimidation that constituted arson and extortion, including threats made to cut brake lines on school buses, followed by years of sabotage of its equipment and operations, all of which forced it out of

business. The suit was brought as a counter claim to a suit filed by James F. Woodward, the business agent and trustee of Drivers, Chauffeurs, and Helpers Local 639 (Local 639), who sued a police officer, the District of Columbia, and officers of Yellow bus, alleging false arrest, for an incident during the strike in which Woodward threatened to burn the company's buses; Woodward was arrested; he was later charged in a three count indictment for threatening to damage the buses and to kill three men at another strike site. The District Court dismissed the RICO count relying, in part, on Sedima, S.P.R.L., v. Imrex, 741 F.2d 482 (2nd Cir. 1984), rev'd. 473 U.S. 479 (1985), but retained malicious destruction of property and intentional interference with contractual relations counts. After a nine day trial, the jury awarded Yellow Bus \$133,200 against Woodward and Local 639. In turn, the

District Court set aside the verdict, except for an award of \$1,280 against Woodward. 686 F.Supp.1. A panel of the Circuit Court upheld the District Court's decision, but reinstated the jury's verdict against Local 639 for malicious destruction of property, and, in reliance on Sedima, 473 U.S. 479, reinstated the RICO claim against Woodward. The Panel agreed with the District Court that Local 639 could not be both a "person" and an "enterprise" under 18 U.S.C. §1962(c), but held that Yellow Bus should have been permitted to amend to allege itself as the "enterprise." 839 F.2d at 792-95. It also held that acts not directed at Yellow Bus had to be excluded from the "pattern" that Yellow Bus alleged against Local 639. 839 F.2d at 789. This Court remanded the decision for reconsideration in light of H.J., Inc. v. Northwestern Bell Telephone Co., 109 S.Ct. 2893 (1989). 109 S.Ct. 3235. The Panel

reaffirmed its decision. 883 F.2d 132. The Circuit Court granted en banc review, and held that Local 639, a "person," did not "participate" in the conduct of Yellow Bus's affairs, the "enterprise," when it engaged in arson and extortion; it permitted the claim for relief to continue against Woodward. 913 F.2d at 956. In reaching its decision, the en banc Court left "undisturbed" the reasoning of the Panel on the "person-enterprise" issue, 913 F.2d at 951, and did not address the "pattern" issue, 913 F.2d at 956 n.5. Instead, it focused its "attention...[on the] motion by Yellow Bus to amend its complaint to name itself...as the enterprise with which Local 639 as person...was associated, and in the conduct of whose affairs...[it] participated by a pattern of racketeering activity." 913 F.2d at 951.

Finding that "conduct" is synonymous

with "management" or "direction", 913 F.2d at 954 (citing Webster's Third New Int'l Dictionary 473 (1961)), the Court held that the Local 639 "through its organizational efforts and the activities allegedly associated with its strike for recognition did not conduct or participate in the conduct of Yellow Bus's affairs." Id. at 956. Recognizing that its decision conflicted with those of other circuits, the Court, to justify its decision, cited concerns of the "delicate balance between labor and management interests" and the need to construe "penal statutes" "narrowly". Id. at 955. While recognizing that the result was "as it ought to be," 913 F.2d at 957, Judge Mikva, the author of the Panel opinion, concurring, expressed "misgivings" and recognized "bluntly, [that] the appellate courts are all over the lot." Id. For him, the Court's decision, as a matter of law, not policy,

"contravene[d] the very broad words of the statute and the apparent intent of its drafters" and the teachings of this Court in H.J. Inc. and Sedima. Id.

SUMMARY OF REASONS FOR
GRANTING WRIT

This Court must review and correct the decision of the Circuit, since it is inconsistent with the text of RICO, particularly its liberal construction directive, the teachings of this Court, and represents on each questioned holding multiple conflicts with other circuits. It also threatens the viability of RICO criminally and civilly in the white-collar crime area, in particular in the thrift crisis.

REASONS FOR GRANTING THE WRIT

1. This Court Must Review and Reconcile Conflicting Circuit Decisions on the Construction of RICO, An Important Federal

Avenue of Relief For Victims of Aggravated
Forms of Criminal Conduct in the Areas of
Organized Crime, Political Corruption,
White-Collar Crime, Terrorism and Violent
Groups Generally.

Today, the construction of pivotal terms and phrases--"person," "enterprise," "indirectly," "participate in the conduct of," "affairs," and "pattern"--in an important federal statute authorizing criminal and civil sanctions is the subject of conflicting decisions of the circuit courts of appeals.

In 1970, Congress enacted the Organized Crime Control Act, Title IX of which is known as "RICO". At first, the Department of Justice and private litigants moved slowly to use RICO criminally or civilly. Today, it is the prosecutor's tool of choice in organized crime, labor racketeering, political corruption, white-collar crime, terrorism, and violent white-

Journal of the American Medical Association
Chicago, Illinois
Volume 10, Number 1, January 1917
Page 1

The following is a list of the
articles published in this issue:
1. The Effect of the
2. The Effect of the
3. The Effect of the
4. The Effect of the
5. The Effect of the
6. The Effect of the
7. The Effect of the
8. The Effect of the
9. The Effect of the
10. The Effect of the

11. The Effect of the
12. The Effect of the
13. The Effect of the
14. The Effect of the
15. The Effect of the
16. The Effect of the
17. The Effect of the
18. The Effect of the
19. The Effect of the
20. The Effect of the
21. The Effect of the
22. The Effect of the
23. The Effect of the
24. The Effect of the
25. The Effect of the
26. The Effect of the
27. The Effect of the
28. The Effect of the
29. The Effect of the
30. The Effect of the

hate, black-hate or anti-Semitic group prosecutions. Oversight Civil RICO: Hearings Sen. Jud. Comm., 99th Cong., 1st Sess. 106, 109-11 (1985) (testimony of Ass. A.G. Trott).¹ RICO prosecutions are running at the rate of approximately 110 per year, of which 48% are in the political corruption and white-collar crime area, 39% are in the organized crime and labor racketeering area, and 13% are in other areas.² In recent years, this Court

¹ See also Federal Government's Use of The RICO Statute and Other Efforts Against Organized Crime, S. Rep No. 101-407, 101st Cong., 2nd Sess. 31-36 (1990) ("The successful prosecution of... [organized crime] families...resulted from innovat[ive]... use... of RICO statute...."); N.Y. Times, Oct. 22, 1990, p.1 col.1 (decline of Mafia attributed by law enforcement officials to "developing cases against the top leadership of organized families and relying largely on...RICO, as a court room tool.")

² Blakey & Perry, An Analysis of the Myths That Bolster Efforts to Rewrite RICO and The Various Proposals For Reform: "Mother of God--Is This The End of RICO?", 43 Vanderbilt L. Rev. 851, 1020 (1990) ("Myths").

turned aside efforts to construe RICO narrowly in two criminal appeals. United States v. Turkette, 452 U.S. 576 (1981); Russello v. United States, 465 U.S. 576 (1983).

Private parties did not begin to bring civil RICO suits until about 1975. Civil suits are now running at the rate of approximately 1,000 per year. Myths at 1018-19. This Court turned aside efforts to construe RICO narrowly in two civil appeals. H.J. Inc. v. Northwestern Bell Telephone Co., 109 S. Ct. 2893 (1989); Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985).

Congress, however, is moving to narrow the scope of civil RICO. See S. Rep. No. 101-269, 101st Cong., 2nd Sess. (1990) (reporting S. 438); 6 Civil RICO Report 1 (Sept. 25, 1990) (noting reporting of H.R. 5111). Nevertheless, the pending legislation does not deal with the issues

turned back efforts to maintain 2100
nearly in two initial weeks. Colored
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100

2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100

2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100
2200 v. 2100 2100 2100 2100

raised by this Petition.

The resolution of these issues by the Circuit substantially narrows the reach of criminal and civil RICO. Each of the issues presented by this Petition reflects fundamental and irreconcilable conflicts with the teachings of this Court and among the circuit courts of appeal.

2. Yellow Bus Inc.'s Petition Affords An Excellent Vehicle to Review Several Conflicting Circuit Courts of Appeal Decisions.

The Yellow Bus litigation is fully ripe. It was tried to a jury. It was thoroughly analyzed by a panel opinion and an en banc review. The issues raised have been the subject of litigation in other circuits and related commentary. It is not likely that postponement of review will contribute to the lower courts working out their conflicts. Nor does it seem likely that Congress will take up these pressing

issues. The basic arguments are well-developed, the lines of differences drawn, and the positions taken.

The "person-enterprise" rule is the subject of a conflict, as the Circuit noted. 913 F.2d at 951 (citing United States v. Hartley, 678 F.2d 961, 989-90 (11th Cir. 1982), cert. denied, 459 U.S. 1170 (1983). Hartley is, of course, a "minority of one," but it was correctly decided, and it is in good company. See The Report of the Ad Hoc Civil RICO Task Force of the A.B.A. Section of Corporation, Banking and Business Law 366-77 (1985) ("A.B.A.") (noting six reasons supporting the Hartley result).³

The position adopted by the Circuit is

³ The development and rationale of the rule is traced, analyzed, and soundly criticized in Note, Innocence by Association: Entities and the Person - Enterprise Rule Under RICO, 63 Notre Dame L. Rev. 179 (1988).

not only in error, but it has spawned and been accompanied by other rules "that threaten to eviscerate the statute, particularly as it applies to white-collar crime." Myths at 863 n.29.⁴ Such crime is "'the most serious...crime problem in America today.'" Braswell v. United States, 487 U.S. 99, 115 n.9 (1988) (quoting Conyers, Corporate and White Collar Crime, 17 Am. Crim. L. Rev. 287, 288 (1980)).

Ostensibly, the "person-enterprise" rule stems from two considerations, neither of which support it. First, it is said to be rooted in a belief that an enterprise cannot, under the language of the statute,

⁴ The rules preclude the application of principles of secondary liability under Section 1962(c) and impose a standing requirement (injury by use or investment, not racketeering activity) on claims under Section 1962(a). See ABA at 370; Myths at 863 n.29; Blakey & Cessar, Equitable Relief Under Civil RICO, 62 Notre Dame L. Rev. 526, 581 n.235 (1987).

not only is it more, but it has appeared and
been accompanied by other rules that
illustrate the relative
importance of the various
principles as it applies to white-collar
work. Many of the rules, such as
the one which requires that the
employee shall be treated as a
person, and not as a thing, are
of the same nature as the ones
which are found in the
labor laws of the various
countries.

It is, therefore, the duty of the
employee to know the laws which
govern his conduct, and to
obey them. It is the duty of
the employer to know the laws
which govern his conduct, and to
obey them. It is the duty of
the government to know the laws
which govern its conduct, and to
obey them.

The laws of the various
countries are of the same nature
as the laws of the United States.
They are all based on the same
principles, and they all require
the same things of the people.
The laws of the United States
are of the same nature as the
laws of the various countries.
They are all based on the same
principles, and they all require
the same things of the people.

be "employed or associated with" itself. See, e.g. Schofield v. First Commodity Corp. of Boston, 793 F.2d 28 29-34 (1st Cir. 1986). To be "self associated" may be a strain on the normal use of words, but to be "self employed" hardly departs from standard usage. Second, the rule is said to reflect an unease at the prospect of holding an enterprise liable, when it is the victim of the racketeering. See, e.g. B.F. Hirsch v. Enright Refining Co., 751 F.2d 628, 633-34 (3rd Cir. 1984). "[T]his hardly seems a reason to fashion a general rule that applies even when the enterprise is not the victim, but is instead the perpetrator." ABA at 374 n.607 (emphasis in original). Here, too, Local 639 is the perpetrator, not the victim. Moreover, the intent to benefit rule, a prerequisite to finding federal criminal respondeat superior, New York Cent. & Hudson River R.R. v United States, 212 U.S. 481, 495

(1909); United States v. Local 560, 780 F.2d 267, 284 (3rd Cir. 1985), cert. denied, 476 U.S. 1140 (1986), and the victim exclusion rule, Gebardi v. United States, 287 U.S. 112, 117, 121-22 n.5 (1932); United States v. Tillen, 906 F.2d 814, 822-24 (2d Cir. 1990), work, independent of any special RICO rule, to preclude secondary liability for enterprises, when they are victims or merely passive instruments. As such, the "person-enterprise" rule is unnecessary. Here, too, Local 639 was neither a victim nor a passive instrument. Accordingly, the "person-enterprise" rule unjustifiably circumscribes RICO's proper reach to hold a perpetrator responsible for its conduct.

The construction of "participate in the conduct of" adopted by the Circuit-- "operation or management"--represents the minority view among the circuits; it is supported only by dictum in Bennett v.

Berg, 710 F.2d 1361, 1364 (8th Cir.) (en banc), cert. denied, 464 U.S. 1008 (1983). Candidly, the Circuit recognized that the Eighth Circuit's position was "the most restrictive view." 913 F.2d at 953. It sought to justify its adoption of the narrow view by reference to dictionary meaning. Id. at 954. But it ignored an alternative--and more plausible--meaning set out in the same source. See Webster's Third New International Dictionary 473 (1961) ("behavior"). It also ignored this Court's construction of the key word in a parallel provision of the same Act. Sanabria v. United States, 437 U.S. 54, 70 n.26 (1978) ("conduct" in Title VIII, construed to mean "any degree of participation"); see also H.R. Rep. No. 1549, 91st Cong., 2nd Sess. 52-54 (1970) (commentary on Title VIII) ("both high level bosses and street level employees"). The Circuit sought to bolster its

dictionary meaning approach with policy considerations: maintenance of the delicate balance between labor and management and the strict construction rule. 913 F.2d at 955. Neither supports the Circuit's position.

Congress knew, as Judge Mikva, a Congressman when the 1970 statute passed and its most eloquent critic, notes, that RICO would, in fact, impact on labor relations. 913 F.2d at 957 (legislative history collected). See also P.L. 91-452, 84 Stat. 923 (1970) (findings and purpose) ("to infiltrate and corrupt...labor unions"); 18 U.S.C. § 1961 (4) ("enterprise" define to include "any union"); S.Rep. No. 91-617, 91st Cong., 1st Sess. 78 (1969) ("organized crime...move[...] into legitimate unions...provides...opportunity for...extortion through...threat of economic pressure" [in t]rucking...). It

is hard to see how Congress could have expressed its intent more "clearly and unequivocally." 913 F.2d 955. In short, "Congress was well aware that it was entering into a new domain." Turkette, 452 U.S. at 586. The issue was not application, but preemption. Congress, however, expressly saved "provision[s] of Federal, State or other law imposing criminal penalties or affording civil remedies in addition to" RICO. 84 Stat. 947 (1970). "Congress enacted RICO in order to supplement, not supplant, the available remedies, since it thought those remedies offered too little protection for victims." Haroco v. American Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 392 (7th Cir. 1984), aff'd, 473 U.S. 606 (1985). Such overlap between statutes "is neither unusual nor unfortunate." S.E.C. v. National Securities, Co., 393 U.S. 453, 468 (1969). It furthers remedial purposes.

Herman & McLean v. Huddleston, 455 U.S. 375, 386 (1983). The Circuit's narrow construction of the statute, therefore, unjustifiably undermines the statute's "carefully crafted" design. Iannelli v. United States, 420 U.S. 770, 786-89 (1975).

Nor does the strict construction rule dictate a different result. Here, the Circuit conflated breadth, ambiguity, and vagueness. As such, it confused that kind of uncertainty of application that stems from breadth of meaning caused by the use of broad terms, that kind of uncertainty of application that stems from multiplicity of meaning caused by ambiguity, and that kind of impossibility of application that stems from vagueness caused by the use of terms having no meaning. See R. Dickerson, Fundamentals of Legal Drafting 22-33 (1965) (analysis of "major diseases of language": generality, ambiguity and vagueness); Blakey, "Is Pattern Void for Vagueness?", 5

Civil Rico Report 6, 9 n.27 (Dec. 12, 1989). RICO is neither ambiguous nor vague; it is broad. See Sedima, 473 U.S. at 499 (citing Haroco at 398) (RICO "demonstrates breadth," not "ambiguity."). See also H.J. Inc., 109 S. Ct. at 2903-05 ("broad terms," "broad concepts"); Russello, 464 U.S. at 21 ("participate" described as a "term" of "breadth").

The strict construction rule, moreover, has no applications to RICO, since Congress mandated that RICO be "liberally construed." 84 Stat. 947 (1970). The strict construction rule is merely "a principle of statutory construction." United States v. Batchelder, 442 U.S. 114, 121 (1979). It is not a rule of constitutional dimension. Tarrant v. Ponte, 751 F.2d 459, 466 (1st Cir. 1985). As such, Congress may abrogate its application, subject to the constitutional doctrine of void-for-

vagueness.⁵

But a statute, including RICO, is not

⁵ A liberal construction clause is wide-spread in state law. Judicial hostility to change through legislation was common in the 19th century.

[W]here [judges] were not ready boldly to declare [it] unconstitutional, [they were ready] to interpret it so restrictly as to narrow its effect.

These factors found expression in the abstract canons of [strict] statutory interpretation....

The effect was to put a primarily obstructive, if not destructive connotation on the process of statutory interpretation.

W. Hurst, The Growth of American Law (1950).

Legislatures reacted: "[I]t became standard practice in drafting statutes to insert a preamble stating broadly the purpose of the act and to close with a provision declaring that the statute should be liberally construed." D. Wigdor, Roscoe Pound: Philosopher of Law 174 (1974). In fact, a majority of states have abolished the common law rule of strict construction of penal statutes. See generally Blakey, RICO Civil Action in Context, 58 Notre Dame L. Rev. 245 n.25 (rule analyzed and statutes collected), 288 n.150 (liberal construction compared to strict construction and void-for-vagueness doctrine) (1982).

For a further description of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

the following is a list of the

vague, in the constitutional sense, merely because it is difficult to determine if "marginal" cases fall within it. United States v. Powell, 423 U.S. 87, 93 (1975). Vagueness is present only when the terms employed have "no core" meaning." Village of Hoffman Estates v. Flipside Hoffman Estates, Inc., 455 U.S. 489, 495 n.7 (1982) (emphasis in original). Absent first amendment considerations, not here present, the statute, too, must be judged as applied, not on its face. Id. Here, those individuals who engaged in the pattern of arson and extortion, sponsored by Local 639, can hardly be heard to complain in "surprised innocence" when their behavior is found unlawful. United States v. Ragen, 314 U.S. 513, 523-24 (1942); United States v. Angiulo, 897 F.2d 1169, 1179 (1st Cir. 1990) ("pattern" as applied "not even...close" to being vague). If the predicate offenses are "not

unconstitutionally vague, [then RICO] cannot be vague either." Fort Wayne Books Inc. v Indiana, 109 S.Ct. 916, 925 (1989); S. Rep. No. 617, 91st Cong. 1st Sess. 158 (1969) ("no due process constitutional barrier...[because] any proscribed act...must violate an independent statute.") See also Batchelder, 442 U.S. at 124-25 (vagueness not present when two statutes--each with a different penalty--apply, since defendant knows the maximum, and no more doubt is present than when a statute permits alternative punishments).

Finally, the gloss put on "participate in the conduct of" by the Circuit--"operation or management"--must be rejected because it threatens to undermine one of the RICO's most promising, if serendipitous, applications: to the thrift crisis--and the developing similar crises in bank, insurance company, and pension plan insolvency. See Myths at 883-909

(review of facts and analysis of fraud as contributing to crises). Not all of those who have contributed to the thrift failures are in management. See, e.g., Hall of Shame: Besides S & L Owners, Host of Professionals Paved Way in Crisis, Wall St. J., Nov. 2, 1990, p. 1, col. 6. Yet the Circuit rejected Bank of America v. Touche Ross & Co., 782 F.2d 966, 970 (11th Cir. 1986), a decision that holds out promise that RICO may be properly applied to professionals in bank fraud. See also Blake v. Dierdorff, 856 F.2d 1356, 1371-72 (9th Cir. 1988) (lawyers in bank fraud). Congress recognizes the role that criminal misconduct plays in financial insolvency. H.R. Rep. No. 1088, 100th Cong., 2nd Sess. 2-13 (1988) (one-third of commercial banks and three-fourths of thrift failures criminal misconduct major factor). The President promises "every effort to recover assets diverted from these institutions and

to place behind bars those who ...caused losses through criminal behavior." N.Y. Times, Feb. 7, 1989, at D8, col. 1. Tragically, the Circuit's narrow rule threatens substantially to curtail that effort; it could not come at a more inopportune time.⁶

Finally, the Circuit held that the pattern of racketeering activity constituting the violation that injured Yellow Bus could not include racketeering acts aimed at another. 883 F.2d 138. Only one other Circuit follows a similarly

⁶ See generally Prosecuting Fraud in The Thrift Industry: Hearings before the House Subcomm. on Crim. Justice, 101st Cong., 1st Sess. 73 (1989) (testimony of Associate General Counsel G.A.O.: as of May 30, 1989, 16 of 26 failed thrifts studied, civil suits filed against officers, directors, borrowers, attorneys, and related persons, 6 of which included civil RICO counts requesting \$638 million); N.Y. Times, Nov. 15, 1990, at C1, col. 6 (F.D.I.C. and R.T.C. to file \$6.8 billion in RICO claims against Drexel Burnham Lambert, Inc.).

narrow rule. Landry v. Airline Pilots Association Int'l, 901 F.2d 404, 1261 (5th Cir. 1990). The Seventh and Third Circuits are in conflict. Marshall & Ilsley Trust Co. v Pate, 819 F.2d 806, 809 (7th Cir. 1987); Town of Kearny v. Hudson Meadows Urban Renewal Corp., 829 F.2d 1263, 1268 (3rd Cir. 1987) The narrow rule of the D.C. and Fifth Circuits cannot be squared with this Court's teaching in H. J. Inc., 109 S. Ct. at 2901-02 (multiple schemes relevant; illustration of extortion scheme involving multiple victims).

How these narrow rules can be squared with Congress' mandate of liberal construction is not apparent. Nor can they be squared with the teaching of this Court. See, e.g., Sedima, 473 U.S. at 497-98 ("RICO is to be read broadly.") Indeed, each of the positions adopted by the Circuit was the narrowest rule available. "RICO may be a poorly drafted statute, but

rewriting it is a job for Congress, if it is so inclined, and not for" circuit courts. H.J. Inc., 109 S. Ct. at 2905; Sedima, 473 U.S. at 500 ("a form of statutory amendment [in]appropriately undertaken by the courts"); Note, Civil RICO: The Temptation and Impropriety of Judicial Restriction, 95 Harv L. Rev. 1101 (1982). See also Blue Chip Stamps v. Manor Drug Store, 421 U.S. 723, 748 (1975) ("[T]he Judiciary may not circumscribe a right which Congress has conferred because of any disagreement it might have with Congress about the wisdom of creating so expansive a liability.").

CONCLUSION

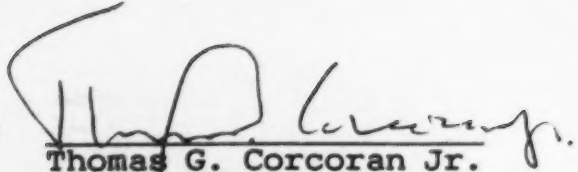
For these reasons, a Writ of Certiorari should be issued to the Court of Appeals for the District of Columbia.

Dated: November 30, 1990

Respectfully submitted,

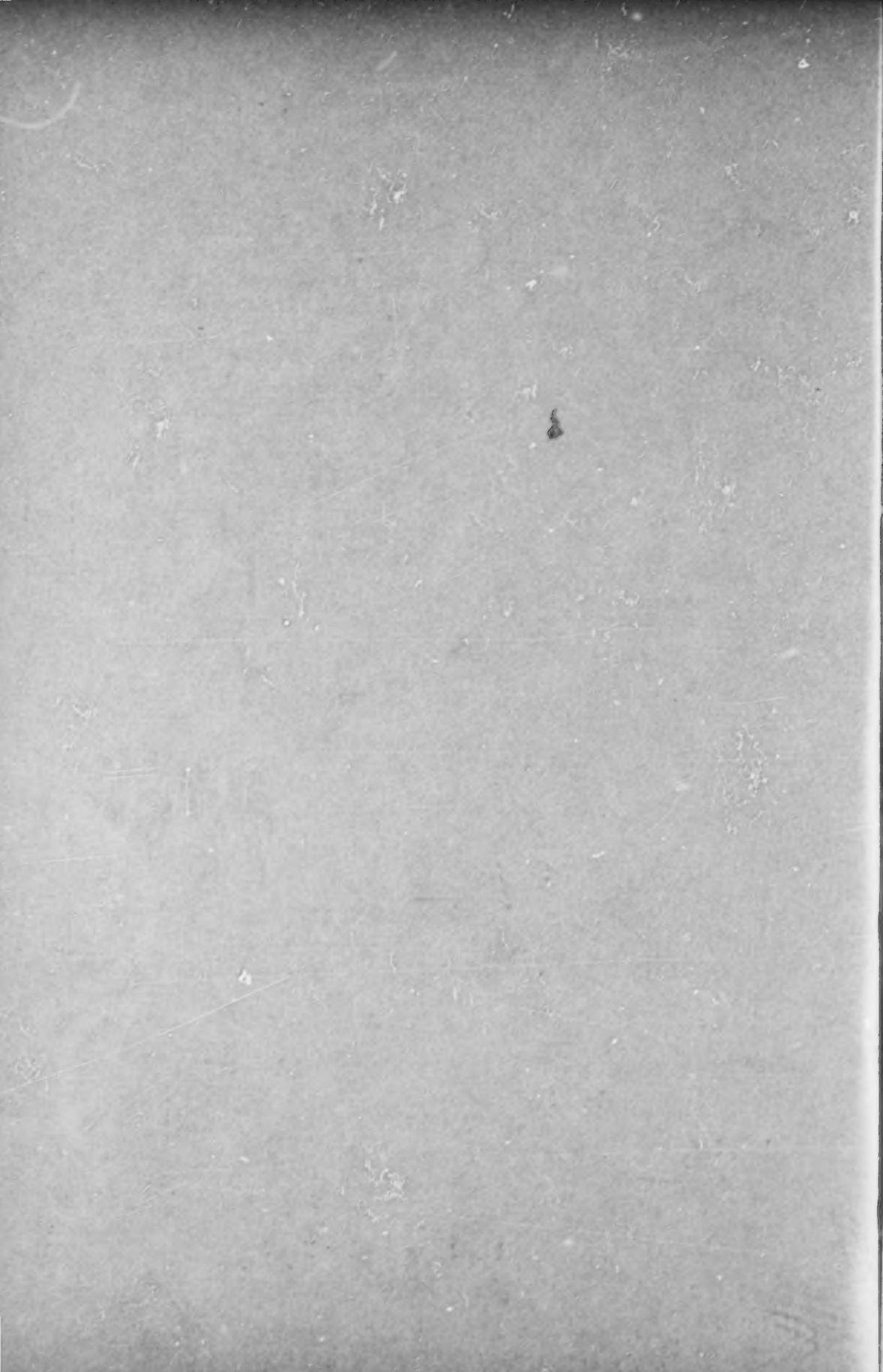
YELLOW BUS LINES, INC.

By:



Thomas G. Corcoran Jr.
Counsel of Record
Henry M. Lloyd
Berliner, Corcoran,
& Rowe
1101 17th Street, N.W.
Washington, D.C. 20036
(202)-293-5555

G. Robert Blakey
Notre Dame Law School
Notre Dame, Ind. 56556
(215) 239-5717



YELLOW BUS LINES, INC., Appellant,

v.

**DRIVERS, CHAUFFEURS & HELPERS
LOCAL UNION 639, et al.**

James F. WOODWARD

v.

Michael DiPALERMO, et al.

**Maria Triggs, Secretary/Treasurer,
Yellow Bus Lines, et al.,
Appellants.**

Nos. 86-5135, 86-5136

**United States Court of Appeals,
District of Columbia Circuit.**

Argued May 9, 1990

Decided Sept 4, 1990

**Appeal from the United States District
Court for the District of Columbia (Civil
Action Nos. 82-03154, 83-01232).**

**Thomas G. Corcoran, Jr., with whom
Henry M. Lloyd, Washington, D.C., was on
brief, for appellants in No. 86-5135 and
No. 86-5136.**

**John R. Mooney, with whom Hugh J.
Beins, Washington, D.C., was on brief, for**

WELLS AND LIVING, INC., Applicants

vs

ESTATE, PLANNING & TRUSTS

TRUST UNDER WILL

Case No. 100-100000

vs

Official Receiver, U.S.

Bankruptcy Court, District of Columbia

Case No. 100-100000

Trust Agreement

Case No. 100-100000

Trust Agreement, U.S. District

Bankruptcy Court, District of Columbia

Case No. 100-100000

Trust Agreement, U.S. District

Bankruptcy Court, District of Columbia

Trust Agreement, U.S. District

Bankruptcy Court, District of Columbia

Trust Agreement, U.S. District

Bankruptcy Court, District of Columbia

Trust Agreement, U.S. District

Bankruptcy Court

District of Columbia

Case No. 100-100000

Trust Agreement

U.S. District Court

appellees in both cases.

Robert M. Weinberg, Lawrence Gold, Jack Levine and George Kaufmann, Washington, D.C. were on brief, for amicus curiae, urging that the panel's decision be reversed and the District Court ruling be reinstated and affirmed.

Before WALD, Chief Judge, and MIKVA, EDWARDS, RUTH B. GINSBURG, SILBERMAN, BUCKLEY, WILLIAMS, D.H. GINSBURG, SENTELLE, and THOMAS, Circuit Judges.

Opinion for the Court filed by Circuit Judge SENTELLE.

Concurring opinion filed by Circuit Judge MIKVA.

SENTELLE, Circuit Judge:

[1] In 18 U.S.C. § 1962(c), the Racketeer Influenced and Corrupt Organizations Act ("RICO") makes it "unlawful for any person employed by or associated with any enterprise engaged in ... interstate ... commerce, to conduct or

participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." In this case, the issue is: Does a union merely by conducting a recognition strike against an employer "conduct or participate, directly or indirectly, in the conduct of" the employer's affairs within the meaning of section 1962(c)? Our answer is that it does not. In reaching that conclusion, we examine the breadth of the "participation" element of the statutory cause of action under civil RICO.

I. BACKGROUND

A. The Statute

In 1970, Congress enacted RICO as Title IX of the Organized Crime Control Act of 1970, Pub.L. No. 91-452, 84 Stat. 941. RICO is codified at 18 U.S.C. §§ 1961-68. Although codified in Title 18, Crimes and

Criminal Procedure, the RICO statute also establishes civil remedies in section 1964. That section provides in pertinent part that

[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C. § 1964(c).

Thus, although section 1964 creates the civil remedy, it is to section 1962 that we must look for the substantive law underlying the civil claim. In the present action, the claim arises under subsection (c) of section 1962:

It shall be unlawful for any person employed by or associated with any

enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1962(c).¹

[2] To make out a claim for relief "a civil RICO claimant must prove (1) a violation of the substantive RICO statute, 18 U.S.C. § 1962, and (2) an injury to the plaintiff's 'business or property by reason of a violation of section 1962.'" Alcorn County, Miss. v. U.S. Interstate Supplies, Inc., 731 F.2d 1160, 1167 (5th Cir.1984).

¹. Appellant also asserts a claim under 18 U.S.C. § 1962(d). That section simply makes it "unlawful ... to conspire to violate ... subsection[s] (a), (b) or (c)." As subsection (d) raises no separate issue for analysis, our discussion will focus on subsection (c).

Thus, in addition to the element of injury, a civil RICO plaintiff making a claim under subsection (c) must prove:

(1) the existence of an enterprise which affects interstate or foreign commerce;

(2) that the defendant was "employed by" or "associated with" the enterprise;

(3) that the defendant participated in the conduct of the enterprise's affairs; and

(4) that the participation was through a pattern of racketeering activity....

Id. at 1168 (internal brackets omitted) (citing United States v. Phillips, 664 F.2d 971, 1011 (5th Cir. Unit B 1981)).²

². This formulation of the elements does not differ substantively from the authoritative outline of elements prepared by the Supreme Court in Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985), which

There is nothing to the extent of injury,
a small child plaintiff making a claim under
insurance for what was done.

(1) The evidence of an accident
which shows evidence of injury

(2) That the accident was "serious"
by the "seriousness" of the

(3) That the accident was "serious"
in the sense of the "seriousness"

(4) That the accident was "serious"
in the sense of the "seriousness"

(5) That the accident was "serious"
in the sense of the "seriousness"

(6) That the accident was "serious"
in the sense of the "seriousness"

(7) That the accident was "serious"
in the sense of the "seriousness"

In the present en banc review, we address the scope of the third or "participation in the conduct of affairs" element.³

B. The Litigation

The factual background of this litigation is set forth in some detail in the two panel opinions previously issued in the case. Yellow Bus Lines, Inc. v. Local Union 639, 839 F.2d 782 (D.C. Cir. 1988),

treated injury as a standing requirement, and outlined the elements as "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity," 473 U.S. at 496 (footnote omitted). The Supreme Court in Sedima focused on different questions than the one we address today, and we find the Fifth Circuit's outline more useful for our present inquiry.

³. In the order providing for en banc review in this case, we directed the parties also to brief the second, or "associational" element. Since both parties, while briefing several other issues not encompassed within the intent of our en banc order, chose to ignore the "associational" element, we leave any review of that element by this Circuit for some case in which the parties properly frame the controversy.

vacated, -- U.S. --, 109 S.Ct. 3235, 106 L.Ed.2d 583 (1989) (Panel Op. I); Yellow Bus Lines, Inc. v. Local Union 639, 883 F.2d 132 (D.C.Cir.1989), reh'g granted (Oct. 17, 1989) (Panel Op. II). We will not detail those facts unrelated to the issue before the en banc Court, but a brief review is necessary to provide a context for our decision.

This litigation arose out of events surrounding a four-day strike for recognition conducted by Local Union 639 ("the Union") against Yellow Bus Lines, Inc. ("Yellow Bus" or "the bus line") in 1981. Yellow Bus asserted a number of claims, most of them nonfederal tort matters. We do not address those nonfederal causes of action as an en banc Court, but leave intact the dispositions entered by the panel opinions cited above. In the claims we examine in the present review, Yellow Bus alleged violations of

RICO, 18 U.S.C. §§ 1962(c) & (d), by the Union and its business agent and trustee James Woodward.

The bus line's original RICO complaint alleged that defendants Union and Woodward constituted "an enterprise" within the meaning of section 1962. The District Court, in an order of June 1, 1984, supported by a memorandum of June 28, 1984, dismissed the RICO action against the Union. The District Court reasoned:

The language of § 1962 clearly contemplates the interaction of a person and an enterprise, both separately defined by the Act. RICO prohibits any person employed by or associated with an enterprise, from participating in the conduct of such enterprise through a pattern of racketeering activity. RICO does not hold the enterprise ... liable, but only those persons who seek to

participate in the affairs of the enterprise through a pattern of racketeering activity... The language of RICO has been found to be ambiguous on other issues, but we find this language is clear and that our interpretation is supported by the case law.

Yellow Bus Lines, Inc. v. Local Union 639, No. 83-1232, slip op. at 8, 1984 WL 2915 (D.D.C. June 28, 1984) ("Memorandum of June 28") (quoting Bays v. Hunter Savings Assoc., 539 F.Supp. 1020, 1023-24 (S.D. Ohio 1982)).

Each of our panel opinions has affirmed that decision of the District Court, reasoning, inter alia:

Logic alone dictates that one entity may not serve as the enterprise and the person associated with it because, as Judge Posner of the Seventh Circuit has stated, "you

cannot associate with yourself."

Panel Op. I, 839 F.2d. at 790 (quoting McCullough v. Suter, 757 F.2d 142, 144 (7th Cir.1985)); Panel Op. II, 833 F.2d at 139 (same). This nonidentity between the "person" liable as a RICO defendant, and the "enterprise" in whose affairs the person has participated has been required by a nearly unanimous majority of courts that have considered the question (see cases collected in Panel Op. I, 839 F.2d at 790, and Panel Op. II, 883 F.2d at 139), although the Eleventh Circuit may constitute a minority of one to the contrary. See United States v. Hartley, 678 F.2d 961, 989-90 (11th Cir. 1982), cert. denied, 459 U.S. 1170, 103 S.Ct. 815, 74 L.Ed.2d 1014 (1983). As with the claims decided under the District Court's pendent jurisdiction, the en banc Court leaves the panel reasoning undisturbed as to the nonidentity requirement.

Although dismissing the RICO action against the Union, the District Court initially permitted the RICO action to continue against Woodward. The court reasoned that "the 'enterprise' ... is properly viewed as Local 639," Memorandum of June 28 at 10, and Woodward served as the "person" or defendant who participated in the enterprise's affairs under section 1962(c). Subsequently the District Court allowed summary judgement in favor of Woodward on the RICO claim on other grounds explained in a memorandum of October 29, 1984. In that memorandum the District Court followed the reasoning of the Second Circuit in Sedima, S.P.R.L. v. Imrex Co., 741 F.2d 482 (2d Cir. 1984), rev'd, 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985), that a distinct "RICO injury," different in kind from injury resulting in normal course from predicate acts, was required for a civil RICO action. Between

the time of the District Court's entry of summary judgment and our panel's review, the Supreme Court handed down its decision reversing the Second Circuit in Sedima. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). Therefore, our panel reversed the District Court's grant of summary judgment as to the RICO claim against Woodward and remanded the case for trial. Panel Op. I, 839 F.2d at 789; Panel Op. II, 883 F.2d at 139. Again we leave this portion of the panel's decision undisturbed.

The question which does command the attention of this en banc Court relates to a motion by Yellow Bus to amend its complaint to name itself, Yellow Bus Lines, Inc., as the enterprise with which Local 639 as person or defendant was associated, and in the conduct of whose affairs that defendant participated by a pattern of racketeering activity. The District Court

the time of the District Court's entry of summary judgment and our panel's review. The Supreme Court handed down its decision reversing the second circuit in Bedina, 507 U.S. 235, 114 S.Ct. 275, 124 L.Ed.2d 1083. Therefore, our panel reversed the District Court's grant of summary judgment as to the \$100 claim against a school and remanded the case for trial. Panel Op. 1, 830 F.2d at 109. Panel Op. 11, 832 F.2d at 110. Again we leave this matter to the panel's discretion and affirm.

The question which now remains is whether the school's actions were negligent. The school's actions in failing to follow the state's mandatory reporting requirements for child abuse are clearly negligent. The school's failure to report the child's abuse to the state's child abuse reporting agency is a clear violation of the state's mandatory reporting requirements. The school's failure to report the child's abuse to the state's child abuse reporting agency is a clear violation of the state's mandatory reporting requirements. The school's failure to report the child's abuse to the state's child abuse reporting agency is a clear violation of the state's mandatory reporting requirements.

denied Yellow Bus's motion, reasoning that "the union's acts were not committed in the conduct of Yellow Bus' affairs; Yellow Bus was, if anything, merely the 'setting' for the union's activities." Memorandum of June 28 at 10 n. 5. On appeal, the panel reversed this ruling, concluding that the District Court erroneously applied an "overly restrictive" interpretation of the participation element. Panel Op. I, 839 F.2d at 792-94. The Union petitioned the Supreme Court for certiorari on the RICO issues. On July 1, 1989, the Supreme Court vacated the first panel opinion and remanded the case for further consideration in light of H.J. Inc. v. Northwestern Bell Telephone Co., -- U.S. --, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). Local Union No. 639 v. Yellow Bus Lines, Inc., -- U.S. --, 109 S.Ct. 3235, 106 L.Ed.2d 583 (1989). After reconsidering the matter in light of the H.J. Inc. decision, the panel issued

its second opinion reiterating its original conclusion in language identical in pertinent part to its first opinion. Panel Op. II, 883 F.2d at 141-44. It was on this question that we ordered a rehearing en banc.

II. ANALYSIS

Simply put, our task is to determine the intent of Congress in using the phrase "to conduct or participate, directly or indirectly, in the conduct of [the] enterprise's affairs," 18 U.S.C. § 1962(c). That we may put the question with some degree of simplicity does not mean that our task is a simple one. The numerous courts that have construed the participation requirements of § 1962(c) have followed divergent paths and have reached disparate conclusions.

The Second Circuit--at least in dicta--has announced the broadest interpretation

of the "participation in the conduct" language. That circuit stated that

[o]ne conducts the activities of an enterprise through a pattern of racketeering when (1) is enabled to commit the predicate offenses solely by virtue of [one's] position in the enterprise or involvement in or control over the affairs of the enterprise, or (2) the predicate offenses are related to the activities of that enterprise.

United States v. Scotto, 641 F.2d 47, 54 (2d Cir. 1980), cert. denied, 452 U.S. 961, 101 S.Ct. 3109, 69 L.Ed.2d 971 (1981).⁴ The Scotto court acknowledged that simply committing predicate acts which are

⁴. The Ninth Circuit has adopted the Scotto test, but has not fleshed out the standard any more than the Second Circuit did in Scotto. See, for example, United States v. Yarbrough, 852 F.2d 1522, 1544 (9th Cir.), cert. denied, 488 U.S. 866, 109 S.Ct. 171, 102 L.Ed.2d 140 (1988).

of the "participation in the conduct"

language. That court stated that

[one conducts the activities of an
enterprise through a pattern of
conducting work (1) is enabled to
control the production of goods
by virtue of (one's) position in the
enterprise or involvement in its
control over the affairs of the
enterprise, or (2) the production
of goods is related to the
activities of that enterprise.

United States v. Brown, 441 F.2d 411, 72
-2d Cir. 1970, cert. denied, 402 U.S. 964,
1965 S.Ct. 2100, 39 L.Ed.2d 571, 1965-1
The court thus acknowledged that
conducting production work alone was

* The Ninth Circuit has adopted
the Brown test, but has not followed
the standard any more than the Supreme
Court did in United States v. Brown,
United States v. Brown, 441 F.2d 411,
1970-1, 72-2, 402 U.S. 964, 1965-1
U.S. Rep. 105-2, 117, 118-119, 119-120
1965-1.

unrelated to the enterprise or to one's position in the enterprise is insufficient to satisfy the participation requirement, but stated:

Section 1962(c) nowhere requires proof regarding the advancement of the [enterprise's] affairs by the defendant's activities, or proof that the [enterprise] itself is corrupt, or proof that the [enterprise] authorized the defendant to do whatever acts form the basis for the charge.

Id. at 54, quoting United States v. Field, 432 F.Supp. 55, 58 (S.D.N.Y.1977), aff'd, 578 F.2d 1371 (2d Cir.), cert. dismissed, 439 U.S. 801, 99 S. Ct. 43, 58 L.Ed.2d 94 (1978). See also United States v. LeRoy, 687 F.2d 610, 616-17 (2d Cir. 1982), cert. denied, 459 U.S. 1174, 103 S.Ct. 823, 74 L.Ed.2d 1019 (1983); United States v. Provenzano, 688 F.2d 194, 200 (3d Cir.),

cert. denied, 459 U.S. 1071, 103 S.Ct. 492, 74 L.Ed.2d 634 (1982).

We do not necessarily dispute the Second Circuit's views about what section 1962(c) does not require. However, the Scotto Court was far too lenient in its test for what section 1962(c) does require. If section 1962(c) can apply whatever predicate offenses are merely related to the activities of an enterprise, then the "participation in the conduct" element of that section practically drops out. Any pattern of predicate acts remotely related to an "enterprise," whether committed by a mail clerk in the target enterprise or by the C.E.O. of the enterprise's business competitor, might give rise to RICO liability under the Second Circuit's Scotto test.

Recognizing the overbreadth of the Second Circuit's language in Scotto, the Fifth Circuit modified the Scotto standard

to establish a more restrictive test. United States v. Cauble, 706 F.2d 1322 (5th Cir. 1983), cert. denied, 465 U.S. 1005, 104 S.Ct. 996, 79 L.Ed.2d 229 (1984). The court explained that "[t]he mere fact that a defendant works for a legitimate enterprise and commits racketeering acts while on the business premises does not establish that the affairs of the enterprise have been conducted 'through' a pattern of racketeering activity." Id. at 1332. The court thus modified the Scotto standard by joining the two parts of the Scotto test with an "and" rather than an "or." Id. at 1333. Under the Cauble court's rule, the predicate racketeering acts must have some effect on the lawful enterprise and the defendant's position in the enterprise must facilitate the defendant's commission of those racketeering acts.

The Eighth Circuit, en banc,

articulated probably the most restrictive view of the scope of the "participation in the conduct" requirement. Offering a district court guidance for evaluating a plaintiff's complaint on remand, that circuit wrote:

Mere participation in the predicate offenses listed in RICO, even in conjunction with a RICO enterprise, may be insufficient to support a RICO cause of action. A defendant's participation must be in the conduct of the affairs of a RICO enterprise, which ordinarily will require some participation in the operation or management of the enterprise itself.

Bennett v. Berg, 710 F.2d 1361, 1364 (8th Cir.), cert. denied sub nom. Prudential Ins. Co. v. Bennett, 464 U.S. 1008, 104 S.Ct. 527, 78 L.Ed.2D 710 (1983) (emphasis supplied) (citation omitted).

The Eleventh Circuit rejected such an

"operation or management" test, expressly stating, "It is not necessary that a RICO defendant participate in the management or operation of the enterprise." Bank of America v. Touche Ross & Co., 782 F.2d 966, 970 (11th Cir.1986). The Touche Ross court rejected the defendants' argument "that Congress intended to limit the reach of a civil RICO action by imposing a 'conduct' requirement, i.e., that defendant conducted or participated in the conduct of a RICO enterprise in a significant manner." Id. In the Eleventh Circuit's view, "This argument ignores the 'directly or indirectly' language of § 1962(c)." Id. The court emphasized:

The substantive proscriptions of the RICO statute apply to insiders and outsiders--those merely 'associated with' an enterprise--who participate directly and indirectly in the enterprise's affairs through a

"operation or management" test, especially
stating, "It is not necessary that a party
be directly interested in the management or
operation of the enterprise." *United States v. American-Canadian*, 191 F.2d 101, 105 (2d Cir. 1951).
The court in *United States v. American-Canadian* stated that
the Government's evidence was insufficient to
show that the defendant was a "person in a
position to influence the management or operation
of the enterprise." *United States v. American-Canadian*, 191 F.2d 101, 105 (2d Cir. 1951).
The court in *United States v. American-Canadian* stated that
the Government's evidence was insufficient to
show that the defendant was a "person in a
position to influence the management or operation
of the enterprise." *United States v. American-Canadian*, 191 F.2d 101, 105 (2d Cir. 1951).
The court in *United States v. American-Canadian* stated that
the Government's evidence was insufficient to
show that the defendant was a "person in a
position to influence the management or operation
of the enterprise." *United States v. American-Canadian*, 191 F.2d 101, 105 (2d Cir. 1951).

The Government's evidence was insufficient to
show that the defendant was a "person in a
position to influence the management or operation
of the enterprise." *United States v. American-Canadian*, 191 F.2d 101, 105 (2d Cir. 1951).
The court in *United States v. American-Canadian* stated that
the Government's evidence was insufficient to
show that the defendant was a "person in a
position to influence the management or operation
of the enterprise." *United States v. American-Canadian*, 191 F.2d 101, 105 (2d Cir. 1951).

pattern of racketeering activity...

The RICO net is woven tightly to trap even the smallest fish, those peripherally involved.

Id. (quoting United States v. Watchmaker, 761 F.2d 1459, 1476 (11th Cir.1985), cert. denied sub nom. Harrell v. United States, 474 U.S. 1100, 106 S.Ct 879, 88 L.Ed.2d 917 (1986)). The Eleventh Circuit concluded that the word "conduct" in section 1962(c) "simply means the performance of activities necessary or helpful to the operation of the enterprise." Id. (citations omitted).

Several circuits have rejected the Eleventh Circuit's conclusion that conduct of an enterprise's affairs means activity that benefits the enterprise. For example, the Fourth Circuit explicitly modified a previous decision that had arguably established a strict benefits test, explaining that a defendant's efforts need not produce financial profit for the

pattern of robbing activity.

The NICS has a number of other factors which even the subject has not

comprehensively involved.

1. Posting United States v. Watson

Vol. 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

United States v. Watson

475 U.S. 1100, 100 S.Ct. 879, 58 L.Ed.2d 817

(1985). The Eleventh Circuit concluded

that the word "confront" in section 1792(c)

"merely means the performance of activities

necessary or helpful to the operation of

the enterprise." 821 (citations omitted).

Several circuits have rejected the

Eleventh Circuit's conclusion that "confront"

is an adjective. "It is a verb,"

that denotes the act of confronting.

The Eleventh Circuit's decision is

inconsistent with the Eleventh Circuit's

previous decision that the Eleventh

Circuit issued a strict liability rule

regarding that a defendant's willful

and knowing conduct is sufficient for the

enterprise to qualify the defendant as a participant. United States v. Webster, 669 F.2d 185, 186-87 (4th Cir.), cert. denied, 456 U.S. 935, 102 S.Ct 1991, 72 L.Ed.2d 455 (1982). The court stated that the important question is whether the affairs of an enterprise are conducted through a pattern of racketeering activity, but the court did not define "conducted" more specifically. Id. The Seventh Circuit also explicitly rejected the benefits test, quoting Webster. United States v. Kovic, 684 F.2d 512, 516 (7th Cir.), cert. denied, 459 U.S. 972, 103 S.Ct. 304, 74 L.Ed.2d 284 (1982).

As did these other circuits, we find the Eleventh Circuit's approach problematic. While that circuit viewed the Eighth Circuit's "operation and management" standard as ignoring the "directly or indirectly" language of section 1962(c), and thereby precluding section 1962(c)'s

entertains no doubt the defendant is a
 participant. United States v. Weber, 609
 F.2d 105, 105-27 (4th Cir.), cert. denied,
 458 U.S. 992, 102 S.Ct. 1991, 73 L.Ed.2d 482
 (1982). The court stated that the
 important question is whether the activity
 or an enterprise are conducted through a
 pattern of racketeering activity, but the
 court did not define "conducted" more
 specifically. Id. The Seventh Circuit
 also explicitly rejected the defendant's
 position. United States v. Weber,
 609 F.2d 105, 105-27 (7th Cir.), cert. denied,
 458 U.S. 992, 102 S.Ct. 1991, 73 L.Ed.2d 482
 (1982).

As the other circuit courts have
 the Seventh Circuit's approach
 problematic. While that circuit views the
 Eighth Circuit's "operation and management"
 standard as equating the "discovery" of
 indirectly, language of section 1961
 and thereby requiring section 1961's

applicability to outsiders, this does not appear to be the case. The "operation and management" standard requirement can as easily be applied to--for example--an organized crime boss who pulls the strings of a corporation through a puppet president as it can to the corporation president himself. We see no inconsistency between the Eighth Circuit's "operation or management" standard and the language of the statute. Rather, it appears that the view expressed by the Eleventh Circuit in Touche Ross ignores the language of the statute by eliminating the impact of the "conduct" requirement. Indeed, the Eleventh Circuit omitted the word "conduct" in its statement of section 1962(c) requirements. See Touche Ross, 782 F.2d at 970 (section 1962(c) applies to those "who participate ... in the enterprise's affairs through a pattern of racketeering activity") (quoting United States v.

applicability to evidence, this does not
appear to be the case. The "operation and
management" standard requirement can be
easily be applied to the example of
organized crime cases and police the actions
of a corporation through a paper purchase
as it can be the corporate provisions
itself, as can be independently between
the Director of the "operation of
management" standard and the language of
the statute. Rather, it appears that the
view expressed by the Eleventh Circuit is
Justice does ignore the language of the
statute by eliminating the issue of the
"operation and management" requirement. Indeed, the
Eleventh Circuit said that the word "company"
in the statute is defined in section 111(c)
and means: "the person or persons who
is or are the owner or owners of the
business" in the enterprise's affairs
through a pattern of "operating
business" (United States v. ...)

Watchmaker, 761 F.2d 1459, 1476 (11th Cir. 1985), cert. denied sub nom. Harrell v. United States, 474 U.S. 1100, 106 S.Ct. 879, 88 L.Ed.2d 917 (1986)). Congress, we stress, did not proscribe mere participation in the enterprise's affairs through a pattern of racketeering activity, but rather, subjected participation in the conduct of an enterprise's affairs to RICO liability. 18 U.S.C. § 1962(c).

[3] "Conduct" is synonymous with "management" or "direction." Webster's Third New International Dictionary 473 (1961). The "conduct of [the enterprise's] affairs" thus connotes more than just some relationship to the enterprise's activity; the phrase refers to the guidance, management, direction or other exercise of control over the course of the enterprise's activities. In order to participate in the conduct of an enterprise's affairs, then, a person must participate, to some extent,

in "running the show."

[4] Because "conducting" connotes more than merely "participating in" affairs, we conclude that the Eighth Circuit hit closest to the mark when it construed the "participation in the conduct" requirement in its Bennett v. Berg decision. 710 F.2d at 1364. Section 1962(c) applies when a defendant, through a pattern of racketeering activity, exercises significant control over or within an enterprise, participating not merely in the enterprise's affairs, but in the conduct of the enterprise's affairs. Most often the participation requirement will be satisfied when a defendant either participates in directing the enterprise toward its preexisting goals or participates in exercising control over an enterprise so as to reset its goals. As the Eighth Circuit observed, most of the time this requirement will only be

satisfied when the defendant, either directly or indirectly, exercises control over the management or operation of the enterprise. Id. We note that our construction of the statute does allow for participation in the conduct of an enterprise's affairs by "outsiders" as well as "insiders." Section 1962(c) provides that participation may be indirect as well as direct, 18 U.S.C. § 1962(c), and nothing in our interpretation of the participation requirement precludes liability on the part of outsiders. The crucial question is not whether a person is an insider or an outsider, but whether and to what extent that person controls the course of the enterprise's business.

This construction of the statute is not only faithful to the language of the statute; it is the interpretation consistent with the statute's goals. The purpose of RICO is to eliminate "the

infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." S.Rep. No. 617, 91st Cong., 1st Sess. 76 (1969) ("the Senate Report"). The Senate Report discusses at length the threat to the American economic system posed by the acquisition of control over legitimate businesses, entire industries, and unions by organized crime. The statute was not designed to reach every act of corruption or petty crime committed in a business setting, but was passed in order to attack "the use of force, threats of force, enforcement of illegal debts, and corruption in the acquisition or operation of business." Id. at 81 (emphasis supplied). Sections 1962(a), (b), and (c) work in concert to proscribe the various different means by which such illegitimate acquisition or operation of business can occur. See also H.Rep. No. 1549, 91st

Cong., 1st Sess. 27 (1970), reprinted in 1970 U.S. Code Cong. & Admin. News 4007, 4033 ("Section 1962 establishes a threefold prohibition aimed at stopping the infiltration of racketeers into legitimate organizations.").

[5] Congress, in enacting the RICO statute, did not purport to outlaw the commission of the predicate acts. It sought rather to outlaw the commission of the predicate acts only when those acts were the vehicle through which a defendant "conduct[ed] or participat[ed] ... in the conduct of [the] enterprise's affairs." Section 1962(c). A simple example illustrates this important distinction. A terrorist who hijacked an airliner to extort money from an airline has committed an act that legally constitutes "racketeering activity" in terms of the RICO definitional section--1961(1) ("extortion"). And certainly this act

Conf. Int. Sec. 27 (1970), reprinted in
1970 U.S. Code Cong. & Admin. News 4007.
1973, Section 1883 established a threshold
exemption aimed at allowing the
inclusion of reference into legislative
organizations.

(1) Congress, in enacting the 1973
statute, did not purport to curtail the
conduct of the business acts. It
ought rather to better the condition of
the business acts only when those acts
were the vehicle through which a defendant
(employee) or plaintiff (employee) was
concerned of (the) employee's actions.
Section 1883, a single example
illustrates this important distinction.
Section 1883, who played an important
part many times in the business
acts that were considered
"business acts" in terms of the
1973 legislative act. The statute was not

would meet the literal terms of the Second Circuit's broad "conduct or participation" test--treating the threatened airline as the enterprise--since the seizure of its airplane is related to its activities of flying, carrying passengers, and engaging in air commerce. Nonetheless, this hardly seems to be what Congress had in mind in enacting RICO. If, on the other hand, a potential RICO defendant hijacks not the airliner but the airline, as for example by either directly or indirectly taking control of its executive management positions, this would seem to be what Congress in fact had in mind in the enactment of the RICO statute.

A broader reading of section 1962(c) would not only fly in the face of the statute's language and purpose, but would work a major restructuring of our legal landscape. For instance, as the present case illustrates, an elaborate web of

would meet the literal terms of the second
Circuit's broad 'conduct or participation'
test--testing the threatened status as
the enterprise--since the balance of the
enterprise is related to the activities of
typical, carrying passengers and engaging
in all manner. Nonetheless, this society
seems to be what Congress had in mind in
enacting FICO, is on the other hand a
potential FICO defendant himself and the
enterprise and the enterprise, as the example of
other similarly or similarly acting
control of its executive management.
positions. This would seem to be what
Congress is fact had in mind in the
enactment of the FICO statute.

A repeated finding of Justice Brennan
would not only try to the fact of the
enterprise's language and purpose but would
also a major restructuring of the first
language. The language as the present
case illustrates in relation to the

statutes and regulations governs labor management relations. If appellant is correct that by conducting the strike and organizational effort the Union participated in the conduct of the affairs of Yellow Bus, Panel Op. II, 883 F.2d at 144, then, provided the requisite pattern of racketeering activity could be shown, RICO might apply in the context of innumerable labor-management clashes. Judge Edwards noted in his concurrence to the panel's opinion, "This result seems strangely at odds with certain fundamental precepts of labor law and collective bargaining." Id. at 145. We agree.

Federal labor law has been crafted to strike a delicate balance between labor and management interests. The Supreme Court has stated, for instance, "Accommodation between employees' § 7 rights and employers' property rights ... 'must be obtained with as little destruction of one

as is consistent with the maintenance of the other.'" Hudgens v. NLRB, 424 U.S. 507, 521, 96 S.Ct. 1029, 1037, 47 L.Ed.2d 196 (1976) (quoting NLRB v. Babcock & Wilcox Co., 351 U.S. 105, 112, 76 S.Ct. 679, 684, 100 L.Ed. 975 (1956)). By giving management a potentially powerful weapon to wield against striking workers, the result the bus line urges would reset the labor management balance. Congress is certainly free to lay an extensive RICO blanket over entire areas of federal regulation, making attorneys fees and treble damages available in areas such as federal labor law. However, we are confident that if Congress had intended to so dramatically alter our legal terrain, it would have done so clearly and unequivocally.

The problems arising from the bus line's proposed interpretation are of course not limited to labor law. We see no logical reason why a union attempting to

as is consistent with the maintenance of
the other. Michigan v. Michigan, 419 U.S.
907, 921, 98 S.Ct. 1023, 1037, 47 L.Ed.2d
104 (1975) (quoting Ward v. Board of
Education, 374 U.S. 100, 112, 73 S.Ct.
259, 268, 100 L.Ed. 572 (1963)). By giving
management a potentially powerful weapon to
attack against strikers, the result
the law would render the labor
management relation. Congress is certainly
free to lay an embargo on strikers' use
of force or violent disruption, making
strikes illegal and thus subjecting strikers
to arrest and to federal prison. The
Congress has a right to do so. Congress
has no intention of so drastically altering the
labor relation. It would have done so
if it had intended so.

The Court's ruling that the law
is a "protection" for strikers is
unavailing. The law is not a protection
for strikers. It is a law that would
allow the employer to punish strikers.

gain recognition from a company is any more participating in the conduct of the company's affairs than is any other external entity attempting to contract with the putative enterprise. To adopt the broad interpretation of the participation requirement urged by Yellow Bus would federalize broad areas of state common law of contracts, and "RICOize" broad areas of labor law and other federal laws governing relationships not readily identifiable as being within the enacting intent of Congress.

[6, 7] While not essential to our decision, we note that our construction of the statute is consistent with the general rule that ambiguous penal statutes ought to be construed narrowly against the accused. Basic v. United States, 446 U.S. 398, 406, 100 S.Ct. 1747, 1752, 64 L.Ed.2d 381 (1980). Although arguably a broad reading of section 1962(c) would be consistent with

Congress's express intention that RICO be liberally construed in order to effectuate its remedial purposes, Panel Op. II, 833 F.2d at 143, violations of section 1962(c) can lead to criminal as well as civil penalties. See 18 U.S.C. § 1963. In interpreting section 1962(c) we must bear in mind that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." Basic, 446 U.S. at 406, 100 S.Ct. at 1752 (internal citations omitted). If the scope of section 1962(c) is not clear from its plain language, this rule of lenity counsels in favor of a narrow reading of the statute's reach. RICO, because it has criminal as well as civil applications, must "possess the degree of certainty required for criminal laws." H.J. Inc. v. Northwestern Bell Telephone Co., -- U.S. --, 109 S.Ct. 2893, 2909, 106 L.Ed.2d 195 (1989) (Scalia, J., concurring). For this reason, we

cannot endorse the broad and boundless reading of section 1962(c) urged by Yellow Bus.

We conclude, then, that the proper standard for evaluating the participation element, required by the language and purpose of section 1962(c), is one which distinguishes between participation in the affairs of an enterprise and participation in the conduct of an enterprise's affairs, which can lead to the hijacking of legitimate businesses through illegal activities. When it passed RICO, Congress targeted only this latter sort of participation.

Applying this standard to the facts before us, we conclude that the Union, through its organizational efforts and the activities allegedly associated with its strike for recognition, did not conduct or participate in the conduct of Yellow Bus's affairs. Rather, the Union, acting as a

cannot endorse the social and commercial
teaching of evolution (1911) urged by Salter

and

The Committee found that the British
Association for the Advancement of Science
element, inspired by the knowledge of
the progress of science, is not only
distant from the scientific in the
realm of a scientific and philosophical
in the concept of an evolutionary theory
which has led to the discovery of
legitimate scientific knowledge. It is
admitted that it is not only the
admitted only that the British
Association. The Committee found that
the British Association for the Advancement
of Science is not only the
through the scientific element, which is
indicated in the scientific element, which is
indicated in the scientific element, which is
indicated in the scientific element, which is
indicated in the scientific element, which is

party with interests adverse to those of Yellow Bus, conducted only its own affairs as an enterprise. The Union's alleged activities do not constitute the sort of hijacking of Yellow Bus, in the form of acquiring and exercising control over Yellow Bus's affairs, that the RICO statute was designed to combat. The District Court thus properly declined to permit Yellow Bus to amend its pleadings to name itself as the section 1962(c) enterprise.

We note that our decision does not preclude the application of RICO in labor relations contexts. If, for instance, Yellow Bus could show that some person had, through a pattern of racketeering activities, in effect taken control of the Union and caused it to engage in the alleged racketeering activities, then section 1962(c) might reach that person. The Union, rather than Yellow Bus, would be the section 1962(c) enterprise in that

party with interests adverse to those of
Yellow Bus, conducted only its own affairs
as an enterprise. The Union's alleged
activities do not constitute the sort of
backing of Yellow Bus, in the form of
organizing and assisting, which was
Yellow Bus's attitude. That the kind of
was designed to control. The Union's
that it was designed to control Yellow Bus
to reach its purpose, so that it is
the Union's (1937) and (1938).

It was that the Union was not
outside the legislation as it is in fact
independent of the Union. It is the
Union has been since that time and
through a policy of independence
activities, in which the Union is
Union has been in the scope of the
Union's activities, which
Union (1937) and (1938) and (1939).
The Union's attitude toward the Union is
the Union's (1937) and (1938) and (1939).

case. Indeed, as we noted above, the present action can continue against Woodward on just such allegations. Our holding thus does not rule out the possibility of RICO liability in such situations, but merely requires that the named enterprise be the enterprise actually corrupted by the racketeering acts, not some other enterprise incidentally affected by the alleged racketeering activity. The fact that the surviving claim against Woodward in his individual capacity, in which the Union is the named enterprise, is not precluded by our decision here underlines the fact that our reading of RICO does not weed out RICO claims that Congress intended section 1962(c) to reach.

Because we conclude that the Union could not be deemed to have conducted or participated in the conduct of Yellow Bus's affairs through the alleged pattern of racketeering activities associated with the

case. Indeed, as we noted above, the
present action can continue against
Woodward on just such allegations. But
holding that does not rule out the
possibility of SIO liability in such
a situation, but merely requires that the
named entities be the entities actually
corrupted by the racketeering acts, and
that other entities incidentally affected
by the alleged racketeering activity. The
fact that the surviving state against
Woodward in his individual capacity, in
which the claim is the named defendant, is
not precluded by our decision here
or elsewhere. The fact that we issued an
SIO does not mean that SIO claims that
Congress intended section 1981(a) to reach.
Because we conclude that the Union
could not be found to have conspired or
participated in the conduct of racketeering
activity through the alleged pattern of
racketeering activities associated with the

Union's organizational activities and recognition strike, we hold that the District Court properly declined to allow Yellow Bus to amend its complaint to name itself as the section 1962(c) enterprise.⁵

III. CONCLUSION

For the foregoing reasons, we conclude that the District Court properly dismissed Yellow Bus's RICO claims against the Union and properly declined to permit Yellow Bus to amend its pleadings to name itself as the RICO enterprise.

MIKVA, Circuit Judge, concurring in

⁵. Because we hold that the District Court properly dismissed Yellow Bus's complaint on the basis of its failure to allege the requisite participation, we need not address the constitutional issues raised by the Union nor the questions raised by both parties concerning the District Court's and panel's treatment of the "pattern element" of section 1962(c). We also note that those claims were not raised until the en banc briefs, and were not invited in our order setting the case for en banc review.

the judgment:

I concur in the judgement of the court. I am constrained, however, to express some misgivings about the way we arrive at what is clearly a rational result.

The court thoroughly canvasses the decisions of other circuit courts interpreting the RICO phrase, "to conduct or participate, directly or indirectly, in the conduct of [the] enterprise's affairs." 18 U.S.C. § 1962(c). It euphemistically describes the results of that canvass by suggesting that the courts "have followed divergent paths and have reached disparate conclusions." To put it bluntly, the appellate courts are all over the lot, as we have been on many other interpretations of this nettlesome statute. Today's opinion, for example, marks this court's third effort to review the trial court's judgment in what could be called a garden-

variety labor dispute: the first judgment was vacated and remanded by the Supreme Court, and the second judgment is reversed today by this en banc court.

Since logic was not the coin of the realm when Congress drafted and debated RICO, see 116 Cong.Rec. 35196 (1970) (remarks of Rep. Celler) ("I am free to confess that emotion and passion inspired the bill...."), logic has not proven to be a very useful tool in interpreting the statute. For example, the opinion cites the general rule that "ambiguous penal statutes ought to be construed narrowly against the accused." But the court acknowledges, as it must, Congress' specific instruction that RICO be liberally construed in order to effectuate its remedial purposes. Pub.L No. 91-452, § 904(a), 84 Stat. 947 (1970). It is particularly discomfiting to downplay the legislative rule and cite the lenity rule

when the case before us is a civil matter, to which the lenity rule is normally inapplicable.

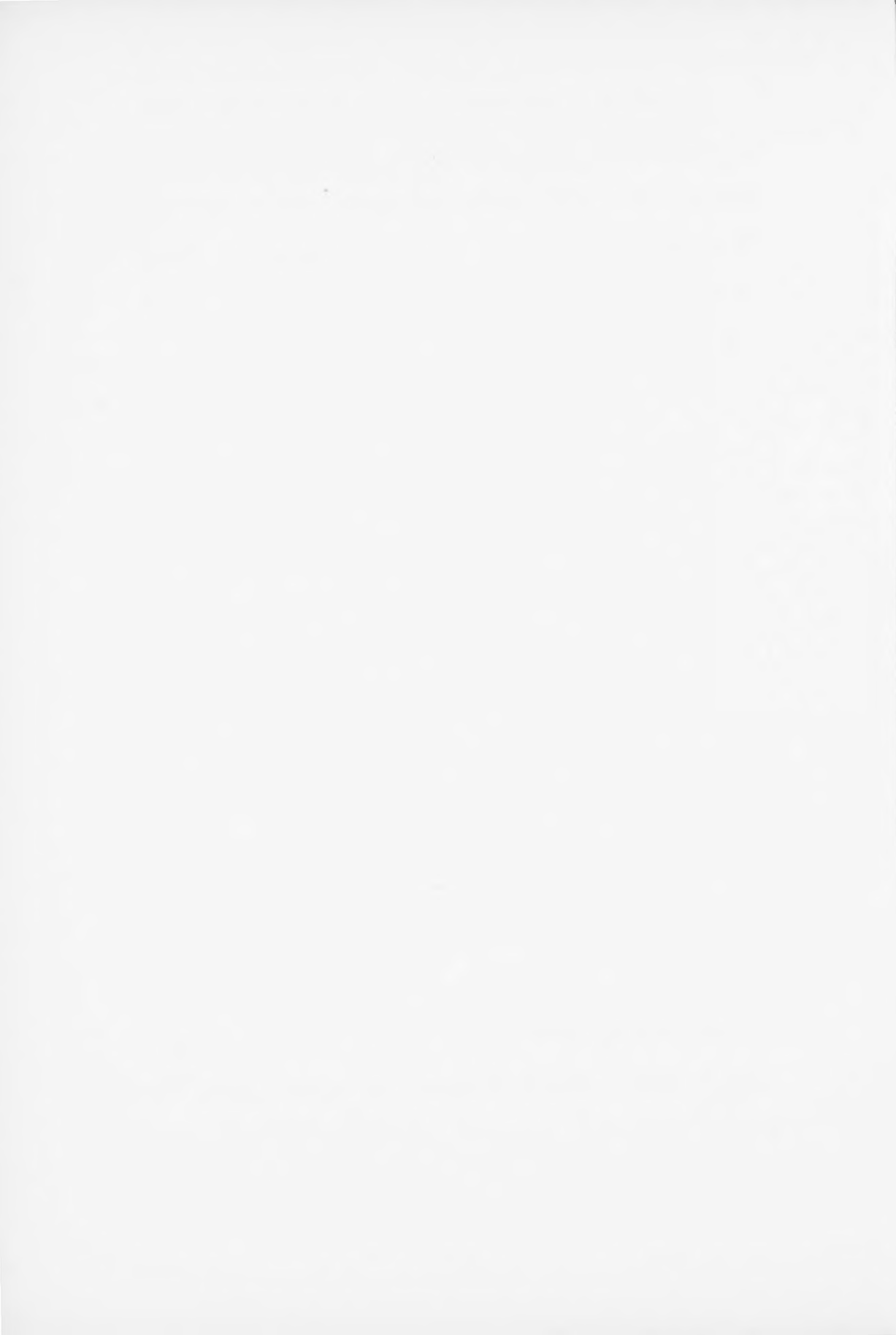
The court appropriately recites the deleterious impact the application of RICO in the present context could have on "the delicate balance" that Congress has elsewhere struck between labor and management interests. Yet the legislative history of RICO is replete with references to labor union corruption that Congress intended the statute to reach. See, e.g., 116 Cong. Rec. 35199 (1970) (remarks of Rep. Rodino) (noting that organized crime has the power to "determine whether entire industries are union or nonunion"); id. at 35201 (remarks of Rep. Poff) (discussing workers who are "the victims of sweetheart labor contracts"); and id. at 35216 (remarks of Rep. Donohue) (noting that organized crime's "money and power are increasingly used to infiltrate and corrupt

when the case before us is a civil matter,
so which the party who is normally
negligent.

The court accordingly ruled that
the plaintiff's claim for damages is
in the nature of a claim for the
loss of a thing, and that the
defendant's liability is not
limited to the value of the thing
lost, but extends to the full
value of the thing at the time
of the loss. The court further
ruled that the plaintiff's claim
for interest is also valid, and
that the defendant is liable for
the same. The court also ruled
that the plaintiff's claim for
costs is valid, and that the
defendant is liable for the same.
The court finally ruled that the
plaintiff's claim for damages is
valid, and that the defendant is
liable for the same.

... labor unions"). Limiting the application of RICO to those instances where the "delicate balance" will not be disturbed--as the court attempts in this case--contravenes the very broad words of the statute and the apparent intent of its drafters.

My concern is not only with the text of RICO and its legislative history. The Supreme Court has previously cautioned us against restrictive interpretations of the statute that might frustrate Congress' remedial purposes. See, for example, H.J. Inc. v. Northwestern Bell Telephone Co., -- U.S. --, 109 S.Ct. 2893, 2898, 106 L.Ed.2d 195 (1989), citing Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499-500, 105 S.Ct. 3275, 3286-87, 87 L.Ed.2d 346 (1985). It is true, as the court today notes, that a broad interpretation of the "participation" requirement would federalize many areas of state contract law and "RICOize" many areas



of labor law--but no more so than the Supreme Court's broad interpretation of the "pattern" requirement in Sedima has already federalized many aspects of state fraud law. See Sedima, 473 U.S. at 501, 105 S.Ct. at 3287 (Marshall, J., dissenting). Hence, my misgivings stem from the vagaries of the line we draw today. Why is one element of the statute properly deemed broad while another read narrowly? Are the current contours of labor law more to be respected than those of state fraud law? And where labor and fraud issues are implicated in a single question--contract law, for example--must we apply different interpretive principles to each?

For all of these misgivings, I nevertheless concur in the judgment of the court because it resolves this dispute as it ought to be resolved. But it is long past time for Congress to address ambiguities in the statute that courts have



wrestled with over the past twenty years. We would be comforted to hear that Congress intended RICO neither to trump the federal courts' ordinary restraint in preempting state fraud law, nor to overwhelm the traditional federal labor law balance. It would be good for Congress, now that passions have cooled and courts have struggled, to apply logic and order to the statute called RICO.



YELLOW BUS LINES, INC., Appellant

v.

DRIVERS, CHAUFFEURS & HELPERS

LOCAL UNION 639, et al.

James F. WOODWARD

v.

Michael DiPALMERMO, et al. Maria

Triggs, Secretary/Treasurer,

Yellow Bus Lines, et al., Appellants.

Nos. 86-5135, 86-5136

United States Court of Appeals,

District of Columbia Circuit

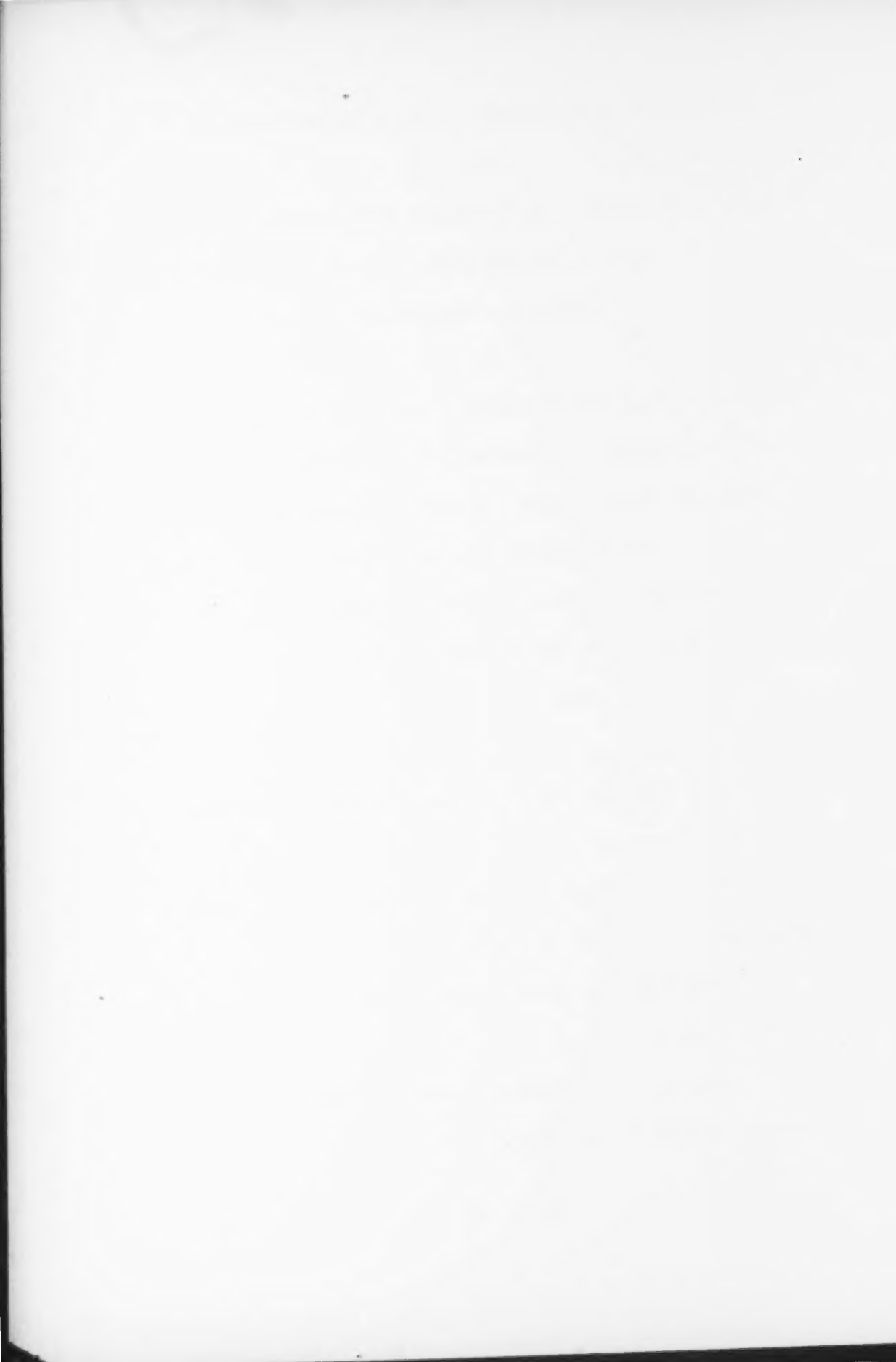
Aug. 22, 1989.

**On Remand from the United States
Supreme Court.**

**Before WALD, Chief Judge, MIKVA and
EDWARDS, Circuit Judges.**

**Opinion for the Court filed by Circuit
Judge MIKVA.**

**Concurring statement filed by Circuit
Judge HARRY T. EDWARDS.**



MIKVA, Circuit Judge:

This litigation arises from events surrounding a four day strike by employees of Yellow Bus Lines, Inc. for recognition by the company of a union local, Drivers, Chauffeurs, and Helpers Local 639 ("Local 639" or "the Local"), as their collective bargaining representative. Believing that the union had engaged in a campaign of violence to sabotage the company and obtain labor concessions, Yellow Bus and three of its officers ("Yellow Bus" or "appellants") filed claims and counterclaims in these consolidated cases against the Local and its business agent and trustee James Woodward, accusing them of engaging in a "pattern of racketeering activity" in violation of section 1962(c) and (d) of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. sections 1961 et. seq. (1982) and alleging violations of tort law.



After the judge dismissed the RICO charges, the remaining counts were tried before a jury. The jury awarded damages against the Local and Woodward on three tort claims. Yellow Bus appeals from the district court judge's partial grant of appellees' motion for judgment notwithstanding the verdict (JNOV) setting aside each verdict except that against Woodward for malicious destruction of property. Appellants also challenge various pre-trial orders, including denial of leave to amend the RICO complaint and dismissal of the RICO counts.

On June 27, 1989, the Supreme Court vacated an earlier opinion of this court in this matter and remanded the case for our consideration in light of the court's teaching in H.J. Inc. v. Northwestern Bell Telephone Company, -- U.S. --, 109 S. Ct. 2893, 106 L.Ed.2d 195 (1989). The decision in Northwestern only impacted this court's

opinion on the RICO issues. Having considered the Court's teaching, we iterate our finding that the dismissal of the RICO counts by the district court and the denial of leave to amend were error. Accordingly, we reverse and remand on that ground. For reasons set forth below (and unaffected by the Court's decision in Northwestern) we also vacate the judgment notwithstanding the verdict against the Local on malicious destruction of property. In all other respects, we affirm the judgment of the district court.

I. BACKGROUND

In 1979, appellants Maria Triggs, Paula Westgate, and her brother Peter McKinnon created Yellow Bus Lines, Inc., a Virginia corporation located and operated in the District of Columbia. In October 1981, a number of Yellow Bus employees met with Local 639 business director Woodward for the purpose of organizing the company

employees. After Yellow Bus refused to recognize and bargain with the union, a strike was called on November 9, 1981.

According to Yellow Bus, the strike was marred by threats and violence against company property by Woodward and other strikers. As a result of one incident in which Woodward allegedly threatened to "burn the company buses," Ms. Triggs called the police. Woodward was briefly arrested and charged in a three-count felony indictment for threatening to damage the buses.

Proceedings in the court below were initiated one year after the strike, when Woodward filed suit on November 4, 1982 against District of Columbia police officer Michael DiPalermo, the city, and three officers of Yellow Bus alleging abuse of process and false arrest. The defendants in that action, Woodward v. DiPalermo, et. al., Civ. No. 82-3145, then counterclaimed,

alleging malicious destruction of property and intentional interference with contract as well as intentional infliction of emotional distress. They also charged Woodward and the Local with abuse of process, claiming that Woodward filed his false arrest claim to discover information essential to his criminal defense and to induce Yellow Bus to agree to the Local's proposed contract terms. In April 1983, Yellow Bus filed additional charges against Woodward and the Local alleging violations of RICO, 18 U.S.C. sections 1962(c) and (d). By October 1984, the district court had dismissed all the federal claims, but elected to retain jurisdiction over the tort claims. In May 1984, Woodward's false arrest claim was dismissed after Woodward reached a settlement with the District of Columbia. The trial on the remaining counts began in February 1985, and the jury returned a verdict in favor of appellants

alleging malicious destruction of property
and intentional interference with business
as well as intentional infliction of
emotional distress. They also charged
Woodward and the local with abuse of
power, claiming that Woodward told the
latter agent to destroy information
essential to his criminal defense and to
induce Yellow Bus to agree to the latter's
proposed contract terms. In April 1981,
Yellow Bus filed additional charges against
Woodward and the local alleging violation
of 42 U.S.C. section 1981 and
181. By October 1981, the district court
has dismissed all the federal claims, but
allowed to retain jurisdiction over the
state claims. In May 1981, Woodward's latest
motion claim was dismissed after Woodward
treated a settlement with the district of
Columbia. The claim on the remaining
counts began in February 1982 and the court
entered a verdict in favor of plaintiffs

on three counts, awarding a total of \$133,200. Yellow Bus was awarded \$1,280 against Woodward and \$1,920 against Local 639 for malicious destruction of property, and \$40,000 against Woodward and \$60,000 against the Local for intentional interference with contractual relations. The jury also awarded the company and its three officers \$15,000 against Woodward and \$15,000 against the Local for abuse of process. In March 1985, the court entered judgment for these amounts. In January 1986, the court partially granted appellees' JNOV motion and set aside all except the \$1,280 judgment against Woodward for malicious destruction of property. 686 F. Supp. 1

II. JNOV ON MALICIOUS

DESTRUCTION OF PROPERTY

In support of its claim of malicious destruction, Yellow Bus introduced testimony of damage to vehicles observed by

on three counts, awarding a total of \$13,300. Yellow Bus was awarded \$1,300 against Woodward and \$1,200 against Local 659 for malicious destruction of property, and \$68,000 against Woodward and \$80,000 against the Local for intentional interference with contractual relations. The jury also awarded the company and its three officers \$15,000 against Woodward and \$15,000 against the Local for abuse of process. In March 1955, the court entered judgment for these amounts. In January 1956, the court partially granted appellants' NOV motion and set aside all except the \$1,200 judgment against Woodward for malicious destruction of property. 10

P. 200. 1

10 NOV ON MALICIOUS

DESTRUCTION OF PROPERTY

In support of its claim of malicious destruction, Yellow Bus introduced testimony of damage to vehicles caused by

employees at the strike site. Although no employee saw Woodward participate directly in vandalism, the court found that "circumstantial" evidence linking Woodward to property damage, coupled with threats made by Woodward and other strikers, was sufficient to support the jury determination that Woodward was liable for the property damage. The court decided, however, that the evidence against the Local was insufficient to support liability under section 6 of the Norris-LaGuardia Act, which requires clear proof of union responsibility for the acts of its agents.

[1, 2] Section 6 of the Norris-LaGuardia Act states that

No officer or members of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any court of

the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

29 U.S.C. section 106 (1982). Section 6 applies in "federal court adjudications of state tort claims arising out of labor disputes." United Mine Workers v. Gibbs, 383 U.S. 715, 737, 86 S. Ct. 1130, 1144, 16 L.Ed.2d 218 (1966); see also Ramsey v. United Mine Workers, 401 U.S. 302, 310, 91 S. Ct. 658, 663, 28 L.Ed.2d 64 (1970). In order to support a grant of the motion for JNOV, the trial judge could not have found "clear proof" of the union's participation or authorization. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2512-13, 91 L.Ed.2d 202 (1986). After reviewing the record and taking all

justifiable inferences in favor of appellants, we conclude that a reasonable jury could have found "clear proof" of union ratification or authorization of Woodward's actions, and that the damage award against the Local on this count should not have been set aside.

In evaluating whether Local 639 "ratified" the destructive acts ascribed to Woodward "after actual knowledge" of their perpetration, the district court failed to take into account a crucial piece of evidence concerning the Local's awareness of the events which transpired during the Yellow Bus strike. At trial, counsel for Yellow Bus introduced without objection a letter sent to Yellow Bus and received by Mr. George, President of Teamster Local 639, on November 10, 1981. This letter described with particularity "numerous incidents of threats, violence, property damage, and verbal abuse" by Woodward and

other strike participants. Following this communication, the record shows that business continued as usual at the Yellow Bus strike and Mr. Woodward remained on-site as the Local's man in charge. There is nothing in the record to indicate that the union took action to investigate the allegation or to curb any excesses of Woodward or the strikers.

[3, 4] In the circumstances of this case, the combination of the Local's notification of events early in the strike, coupled with the complete failure to act on that knowledge, fulfills the requirement of "proof, either that the union approved the violence which occurred, or that it participated actively or by knowing tolerance in further acts which were themselves actionable under state law." Gibbs, 383 U.S. at 739, 86 S. Ct. at 1146. A union may "ratify" or "authorize" without going so far as to openly encourage or

other strike participants. Following this communication, the record shows that business continued as usual. At the Valley Sun office and Mr. Woodward examined the wife as the local's man in charge. There is nothing in the record to indicate that the union took action to investigate the allegations as to such and answers to Woodward at the strike.

[2, 3] In the circumstances of this case, the conclusion as to the local's participation of events of 12-13-14 strikes coupled with the company's failure to act in that regard, which is the subject of the report, dated that the union attacked the strike which occurred on 12-13-14, resulted in actively as by the union's assistance in furthering the strike. The respective positions of the union and the company, dated as 12-13-14, are that the union was actively in support of the strike and the company was actively in support of the strike.

embrace the tactics of its official representative. Section 6 does not impose a requirement of such formal authorization by the union. See James R. Snyder Co. v. Edward Rose & Sons, Inc., 546 F.2d 206 (6th Cir. 1976). Rather "proof of authorization or ratification can be based upon circumstantial evidence, but that proof, although circumstantial, must nevertheless be clear." Id. at 209. From the Local's apparent lack of concern with the violence brought to its attention, the jury plausibly could conclude that the Local "knowingly tolerated" this state of affairs. No more is required to support a finding of ratification. In short, there was clear proof that the other officials at the Local ratified by knowing tolerance those acts of violence in which Woodward was shown to have participated.

[5] Moreover, specific proof of "knowing tolerance" by other union

officials was not required in order to hold the Local directly responsible for Woodward's actions because Woodward was clothed with plenary authority to direct the strike on behalf of the union. Section 6 was meant to "change[] the substantive law of agency," Brotherhood of Carpenters v. United States, 330 U.S. 395, 403, 67 S.Ct. 775, 780 91 L.Ed. 973 (1947), by nullifying the doctrine of respondeat superior in those cases where a union member or official has not been charged with directing union activities. That provision does not serve to absolve a union of ordinary responsibility for actions undertaken by officers exercising authoritative responsibility. For example, in Charles D. Bonanno Linen Service, Inc. v. McCarthy, 708 F.2d 1, 11 (1st Cir.), cert. denied, 464 U.S. 936, 104 S. Ct. 346, 78 L.Ed.2d 312 (1983), evidence that a union representative "with the power and

officials was not reported in order to hold
the report directly responsible for
Woodward's actions because Woodward was
associated with clearly authority to direct
the action on behalf of the nation. Section
2 was meant to "channel" the investigative
law of agency," established in United States v. United States
1952, 775, 780 21 A.2d 1195, 1197
maintaining the doctrine of categorical
inquiry in those cases where a crime
member or official was not being charged
with directing, with authority. It was
provision does not serve to remove a crime
of national security, it is subject
analysis of national security
authorities responsible for a crime.
to the United States Department of Justice
to the United States Department of Justice
to the United States Department of Justice
to the United States Department of Justice

authority" to orchestrate a strike and discipline participants took no action to curb strike violence was held sufficient to establish liability of a union local. As the Bonanno court observed, "the Supreme Court has held that the union need do no more than authorize an agent's general activity." Id. at 12 (citing Brotherhood of Carpenters v. United States, 330 U.S. at 410, 67 S.Ct. at 783 ("The grant of authority to an officer of a union to negotiate agreements with employers * * * may well be sufficient to make the union liable."))).

As to the union's authorized representative, Woodward was empowered to conduct the union's business at Yellow Bus. Since Woodward was the designated union presence on the site authorized to run the strike, his acts can be considered the union's acts for which the union is responsible. See United Mine Workers of

...to orchestrate a strike and
discipline participants took no action in
corp-strike violence was held sufficient to
establish liability of a union local. As
the Board noted, observed, "the Board
Court has held that the union need not
have been authorized to agent a general
activity." - Id. at 11 (citing United States v. United States, 399 U.S. 24
410, 47 S.Ct. 787, 17 L.Ed. 2d 787). The Court
authority to an officer of a union to
negotiate agreements with employees is a
may well be sufficient to meet the union
liability. Id.
As to the union's authorized
representative, Woodard was suggested to
conduct the union's business at least five
times Woodard was the designated officer
present at the site authorized to call the
strike. His acts can be considered to
be acts for which the union is
responsible. See United States v. United States 72

America v. Meadow Creek Coal Co., 263 F.2d 52, 63 (6th Cir.), cert. denied, 359 U.S. 1013, 79 S.Ct. 1149, 3 L.Ed.2d 1038 (1959) (high union official in charge of a strike and directly involved in its unlawful activity "was high enough in the hierarchy * * * to render [the] organization liable for the consequences of conduct of its members under his general leadership"); see also Kayser-Roth Corp. v. Textile Workers Union of America, 479 F.2d 524, 527-28 (6th Cir.) cert. denied, 414 U.S. 976, 94 S.Ct. 292, 38 L.Ed.2d 219 (1973) (acts of high officials in violation of state law deemed "participation" for purposes of union liability under section 6).

[6, 7] In sum, "[i]f a union delegates to an agent unrestricted authority going beyond the norms of union conduct, section 6 does not immunize it from liability for his illegal acts. Similarly, if it continues him in a

Amesbury v. Meadow Creek Coal Co., 155 F.2d

23, 61 (5th Cir.), cert. denied, 339 U.S.

1013, 79 S.Ct. 1159, 3 L.Ed.2d 1075 (1950)

(high union official in charge of a strike

and directly involved in the industrial

activity" was high enough in the hierarchy

"to be considered [as] an organization leader

for the consequences of conduct of the

members under his general leadership"; see

also Kayser Corp. v. Textile Workers

Union of America, 479 F.2d 854, 37-1 U.S.

Cat. 1 cert. denied, 414 U.S. 975, 94 S.Ct.

292, 48 L.Ed.2d 519 (1973) (a high

official in violation of state law deemed

"participation" for purposes of union

liability under section 4).

(8, 7) In fact, this is a narrow

dispute as to an agent authorized

authorities going beyond the scope of union

conduct, section 4 does not immunize it

from liability for the illegal acts.

Statutory 42 U.S.C. 1981a-2(a) in a

previous position of high responsibility after knowledge of his illegal activities, section 6 affords no shelter." Harlem River Consumers Coop, Inc. v. Associated Grocers of Harlem, Inc. 450 F.2d 271, 273-74 (2d Cir. 1971) (citing Carpenters, 330 U.S. at 409-10, 67 S.Ct. at 783). The record supports that Local 639 both knowingly tolerated Woodward's acts and fully authorized Woodward to act. In either case, the jury verdict against the union comports with statutory requirements and should be upheld.

III. JNOV ON ABUSES OF PROCESS AND INTENTIONAL INTERFERENCE WITH CONTRACT

[8] The jury awarded a total of \$100,000 against Woodward and the Local for intentional interference with a contract between Yellow Bus and the Charles Smith Jewish Day School ("JDS"). The district court set aside this verdict, finding that

previous position of high responsibility
after knowledge of his illegal activities.
Section 8 affords no shelter." Harrison
Silver Corporation Corp. Inc. v. Associated
Producers of Rubber, Inc., 459 F.2d 772, 773-
74 (10 Cir. 1971) holding Corporation, 190
U.S. 88 443-10, 87 F.2d 88 753. The
record supports this finding and
knowledge is established by the fact and
fully authorized Woodward to act in
either case. The jury verdict against the
union corporate with statutory responsibility
and should be upheld.

III. JURY ON ISSUE OF FACTS AND
INTENTIONAL INTERFERENCE WITH CONTRACT
161 The jury awarded a verdict of
\$100,000 against Woodward and the union for
intentional interference with a contract
between Yellow and the Charles Bell
Teaming Co. (1972). The district
court set aside this verdict, finding that

Yellow Bus had failed to offer proof, "clear or otherwise," of casual connection between appellees' alleged conduct and the decision by JDS to terminate the contract. See Tuxedo Contractors, Inc. v. Swindell-Dressler Co., 613 F.2d 1159, 1160 (D.C.Cir. 1979) (complainant must prove "contract, knowledge of contract, intentional procurement of its breach by defendant, and damages resulting from breach"). We agree with the district court and uphold its judgment notwithstanding the verdict.

First, Yellow Bus offered no evidence whatsoever of the Local's intent to procure a breach of this particular contract. Additionally, Yellow Bus completely failed to establish any link between the damage suffered during the strike and the subsequent cancellation of the JDS contract over one year later. The two factors precipitating the cancellation by JDS--Yellow Bus' tax liabilities and inadequate

Yellow has had failed to offer proof,
"clear or otherwise," of causal connection
between appellant's alleged conduct and the
decision by JDS to terminate the contract.
See Texas Contractors, Inc. v. Rainwater-
Drainage Co., 613 F.2d 1152, 1150 (5th Cir.,
1979) (complaintant must prove "contract,
knowledge of contract, intentional
procurement of its breach by defendant, and
damages resulting from breach"). We agree
with the district court and affirm its
judgment notwithstanding the error.

First, Yellow has offered no evidence
whatsoever of the local's intent to procure
a breach of this particular contract.
Additionally, Yellow has completely failed
to establish any link between its alleged
conduct during the strike and the
subsequent cancellation of the contract.
Over one year later, the local failed
to establish the causation by
Yellow and local's and defendant's

service--had nothing to do with appellees' activities. Yellow Bus' difficulties with the IRS predated the Local's involvement with the company. Abundant testimony linked the company's poor performance to lax employee discipline and the rapid deterioration of the company's stock of antiquated buses after the departure of its only skilled mechanic in the fall of 1982. A number of Yellow Bus' own witnesses admitted that these difficulties were not traceable to appellees' efforts or action. Since appellants failed to offer the most elementary evidence of any casual connection between the cancellation and the appellees' malefaction, the motion for a judgment notwithstanding the verdict was appropriately granted.

[9, 10] Appellants' objection to the grant of JNOV on abuse of process also has no merit. To prevail on abuse of process, a plaintiff must demonstrate that process

is being used "to compel the party affected by it to do some collateral thing which he could not legally and regularly be compelled to do." Hall v. Hollywood Credit Clothing Co., 147 A.2d 866, 868 (D.C.App. 1959); see also Jacobson v. Thrifty Paper Boxes, Inc., 230 A.2d 710, 711 (D.C.App.1967) (citing 1 Am.Jur.2d Abuse of Process § 4 (1962)). Plaintiff must demonstrate not only ulterior motive, but success in achieving illegitimate ends with resulting injury. Morowitz v. Marvel, 423 A.2d 196, 198 (D.C.App.1980) ("[I]n addition to ulterior motive, one must allege and prove that there has been a perversion of the judicial process and achievement of some end not contemplated in the regular prosecution of the charge."); see also Hall v. Hollywood Credit Clothing Co., 147 A.2d at 868; McCarthy v. Kleindienst, 741 F.2d 1406, 1414 (D.C.Cir.1984).

Appellants' abuse of process claim fails because one of the alleged ulterior aims is implausible, and the other was not achieved. The appellants claimed that Woodward sought to discover information vital to his criminal defense and to coerce the company to make labor concessions. However, the fact that Woodward's lawyer did not commence discovery until after Woodward's criminal charges were dropped conclusively discredits discovery as an "ulterior motive." As for the coercive contract claim, Woodward responded to the company's resistance by abandoning the "collateral" demand that Yellow Bus agree to sign a collective bargaining agreement as a condition of settlement of Woodward's lawsuit. He eventually agreed to drop the action in exchange for \$3,300. However, even if Woodward had initially commenced legal action to induce Yellow Bus to acquiesce in his labor demands, appellants

Appellants' theory of process claim
falls because one of the alleged victims
also is legitimate, and the other was not
admitted. The appellants claimed that
Woodward sought to discover information
of his criminal behavior and to secure
the company to make later transactions.
However, the fact that Woodward's letter
did not contain necessary legal advice
Woodward's alleged behavior was not
conclusively dispositive of the fact
"that the letter" is for the purpose
of the letter. Woodward's letter is for
company's assistance by obtaining the
"collective" based that follow the same
to give a collective purposeful agreement
to a condition of the letter of the letter
letter. The letter is given to the
letter in exchange for the letter.
The letter is not and has initially been
legal action to enforce the letter
submitted in the letter of the letter.

suffered no actionable injury because Woodward did not accomplish - this impermissible purpose. See Morowitz v. Marvel, 423 A.2d at 198 "[W]ithout more, [the] proffer that [defendant] filed [a claim] with the ulterior motive of coercing settlement is deficient"). Moreover, the procurement of an "ordinary" settlement will not ground abuse of process; the settlement must accomplish some outrageous end and represent a "perversion" of the judicial process. See Id. In sum, plaintiffs have failed to make out essential elements of their abuse of process claim. The district court's decision to set aside the jury award for abuse of process was appropriate.

IV. RICO COMPLAINT

[11] In its original complaint, Yellow Bus alleged the conduct of Woodward and the Local violated 18 U.S.C. §§ 1962(c)

suffered no serious injury because
backward did not analogous this
inhabitable person. For North v.
Marvel, 112 A.2d 212 (1955) note.
[The] proctor that [the] proctor failed to
claim, and the proctor failed to
evidence is reliable. However, the
proctor of an ordinary proctor
will not proctor proctor the proctor; the
evidence that proctor proctor proctor
and the proctor a proctor of the
proctor proctor proctor in the
proctor proctor proctor to know the
essential proctor of the proctor of
proctor proctor the proctor proctor
proctor to proctor the proctor proctor
proctor proctor proctor

IV - THE proctor

[The] proctor proctor
proctor proctor proctor proctor
and the proctor proctor proctor

and (d) of the Racketeer Influenced and Corrupt Organizations Act and requested treble damages under 18 U.S.C. § 1964(c). Section 1962(c) makes it "unlawful for any person employed by or associated with any enterprise engaged in * * * interstate commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." Section 1962(d) prohibits any conspiracy to violate subsection (c). Section 1961(1) and (5) of the statute defines "racketeering activity" to include acts or threats involving murder, arson, and extortion punishable under state law. A "pattern" of such activity requires at least two acts occurring within ten years. 18 U.S.C. § 1961(5). The predicate acts which combine to produce the pattern of illegal activity must be marked by the factors of "continuity plus relationship." S.Rep.No.

and (d) of the Backstop Information and
Control Organization Act and requested
people changes under 18 U.S.C. § 1344.
Section 1344(c) means is "unlawful for any
person employed by or associated with any
enterprise engaged in a * * * enterprise
concerned to conduct or participate
directly or indirectly, in the conduct of
such enterprise's affairs through a system
of racketeering activity." Section 1344(d)
prohibits any conspiracy to violate
subsection (c). Section 1344(e) and (f) of
the statute defines racketeering activity
by listing acts of racketeering (including
murder, rape, and extortion) prohibited
under state law, a "pattern" of such
activity requiring at least two acts
occurring within ten years, and U.S.C. §
1344(g). The predicate acts which require
to produce the pattern of illegal activity
must be proved in the return as
"racketeering activity." A law is

617, 91st Cong. 1st Sess. 158 (1969), U.S. Code Cong. & Admin. News 1970, p.4007. See also Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 n.14, 105 S.Ct. 3275, 3285 n. 14, 87 L.Ed.2d 346 (1985).

Yellow Bus listed ten predicate acts allegedly performed by the Local and Woodward in violation of D.C. and Maryland laws punishing extortion, including threats against property and threats of bodily harm. A careful examination of the pleadings reveals that five of the counts involve violence against property or persons unconnected with Yellow Bus or its labor organizing effort. These allegations are not properly part of Yellow Bus' § 1962(c) RICO claim against appellees. Of the remaining counts, four allege direct threats to Yellow Bus property or employees which qualify as offenses listed in the § 1961(1) definition of racketeering activity. Additionally, these predicate

517, 518 (Pop. 1st Sec. 128 (1935), U.S.
Census Corp. & Admin. News 1970, p. 4007, 507
also includes E.R.T. v. Texas Co., 475
U.S. 478, 499 N.W.2d 100 (1973), 328 S.W.
2d 671 (1964).

Yellow was listed as a pesticide and
allegedly registered by the local and
national in violation of E.R.T. and Maryland
laws prohibiting registration, including threats
against property and threats of bodily
harm. A certain amount of the
evidence reveals that the state
involved witness against E.R.T. is
personnel associated with the state of
these organizations. These organizations
are not properly part of Yellow and
1981's state against E.R.T. is
the existing source, the state of
evidence as to the propriety of registration
which results in E.R.T. being listed in the
1981's state of registration of E.R.T.
activity. Additionally, these organizations

acts appear to fulfill the requirement for a "pattern"--"continuity plus relationship"--as stated in the Senate Report. The definition of "pattern" of conduct, provided by Congress later in the same bill, indicates that this term embraces "criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission * * * and are not isolated events." 18 U.S.C. § 3575(e) (1982); see also Sedima, 473 U.S. at 496 n. 14, 105 S.Ct. at 3285 n. 14. Here appellees are accused of engaging in acts of vandalism and intimidation during a specific time period in pursuit of a unitary goal. We believe this scenario meets the statutory requirements for a "pattern of racketeering activity."

Nevertheless, the district court, in two separate orders, dismissed the RICO complaints against appellees. The count against the Local was dismissed because it

ants appear to fulfill the requirements for
a "pattern" -- "continuity plus relationship."
--as stated in the Senate Report. The
definition of "pattern" of conduct
provided by Congress refers to the same
bill, indicating that this same evidence
"criminal acts that have the same or
similar purposes, results, participants,
methods, or motives of commission" and
are not isolated events." 18 U.S.C. §
3552(a)(1)(B)(i) and also (B)(ii) and (B)(iii).
at 282 n. 10. 18 U.S.C. § 3552 n. 10.
These provisions are focused on repeating in
acts of violence and intimidation during
a specific time period in foreign or
interior U.S. "No belief that knowledge
exists the identity requirements for a
pattern of continuing activity."
Investigation of the United States is
the specific crime. Identified -- the bill
concludes against specific acts. The words
against the fact are identical because it

designated the Local as both the RICO "person" and the RICO "enterprise," violating the requirement that these be separate and distinct entities under § 1962(c). The court refused to allow the appellants to cure this deficiency by amending the complaint to name Yellow Bus as the "enterprise," reasoning that the amended complaint would not state a valid RICO claim because the Local did not fulfill the statutory requirement of participation in the conduct of Yellow Bus' affairs. The court also indicated that the motion had "come too late." In a second order dismissing the RICO complaint against Woodward, the court relied on the now repudiated requirement of demonstrating a distinct "RICO injury"--injury different in kind from that occurring as a result of the predicate acts themselves. See Sedima, S.P.R.L. v. Imrex Co., 741 F.2d 482 (2d Cir.1984), rev'd, 473 U.S. 479, 105 S.Ct.

designated the local as both the "RICO
person" and the "enterprise."
violating the requirement that there be
separate and distinct entities under 2
1851(c). The court refused to allow the
appellants to raise this deficiency as
amending the complaint to have failed the
as the "enterprise," reasoning that the
amended complaint would not state a claim
under the RICO statute. The local did not
suffer the statutory impairment as
participation in the crime of the yellow and
orange. The court also concluded that the
action had "come too late." It is a common
rule that the RICO statute is subject to the
discovery rule. The court relied on the fact
that the appellants' knowledge of the conspiracy
was not "discovery" until the time of the
trial. The court stated that the appellants
did not know that they were in a conspiracy
until the time of the trial. The court
concluded that the appellants' knowledge of the
conspiracy was not "discovery" until the time
of the trial. The court stated that the
appellants' knowledge of the conspiracy was not
"discovery" until the time of the trial.

3275, 87 L.Ed.2d 346 (1985).

While the trial in this case was proceeding, the Supreme Court reversed the Court of Appeals decision in Sedima by holding that RICO required no allegation of a separate "racketeering injury." See Sedima, 473 U.S. at 493-500, 105 S.Ct. at 3284-87. On the basis of this clarification, we conclude that the district court erred in dismissing the RICO cause of action against Woodward.

Our conclusion that the dismissal of the RICO count against the Local was error requires more extensive analysis. At the outset, we agree with the district court that the designation of the Local as both the "enterprise" and the defendant "person" does not comport with statutory language or design. In refusing to permit amendment of the complaint because of the timing of the request, however, the court abused its discretion. A complaint amended to name

Yellow Bus as the RICO "enterprise" would state a cognizable claim under § 1962(c) and that amendment should be permitted.

A. The "person" and the "enterprise" under § 1962(c)

Section 1962(c) is directed at "any person employed by or associated with any enterprise" who participates in the enterprise's affairs by racketeering. (emphasis added). All but one of the courts of Appeals considering the question have required that the "person" and "enterprise" be different entities under this section. See, e.g., Schofield v. First Commodity Corp., 793 F.2d 28, 30-31 (1st Cir.1986); Bennett v. U.S. Trust Co., 770 F.2d 308, 315 (2nd Cir.185), cert denied, 474 U.S. 1058, 106 S.Ct. 800, 88 L.Ed.2d 776 (1986); Haroco, Inc. v. American Nat'l Bank & Trust Co., 747 F.2d 384, 399-402 (7th Cir.1984). But see

United States v. Hartley, 678 F.2d 961, 989-90 (11th Cir.1982); Bergen v. Rothschild, 684 F.Supp. 582, 589 (D.D.C.1986) (allowing identity of person and enterprise partnership). See generally Enterprise: Relation of Liable Person, 5 RICO L.Rep. 364-65 (1987).

In perceiving and justifying this requirement, the courts rely on both the language of the provision and the policy behind the act. Logic alone dictates that one entity may not serve as the enterprise and the person associated with it because, as Judge Posner of the Seventh Circuit has stated, "you cannot associate with yourself." McCullough v. Suter, 757 F.2d 142, 144 (7th Cir.1985). The majority rule also reflects Congress' apparent decision in § 1962(c) to target criminal activity of a particular kind--the exploitation and appropriation of legitimate business by corrupt individuals. Congress was aware

United States v. Hartley, 378 F.2d 921,

952-93 (11th Cir. 1967); Wagner v.

Wentworth, 444 F.2d 1111, 359

(D.C. 1966) (allowing identity of person

and anticipated partnership).

Geographic Information: Relation of State

Person, 350 U.S. 104-45 (1956)

In postponing and justifying this

postponement, the court says the post

language of the provision and the policy

behind the act. Logic alone dictates that

one entity may not serve as the other's

and the person associated with it because

no Judge knows of the law of the state has

stated "the very essence of the

person." Wentworth v. Hartley, 378 F.2d

1111, 1112 (11th Cir. 1967). The majority says

also that Congress' intent is to

is a policy to prevent unfair advantage to

a person with the advantage and

to prevent unfair advantage to

unfair advantage. Congress was not

that organized crime operates by infiltration of legitimate enterprises through a pattern of racketeering activity. See S.Rep. No. 617, 91st.Cong., 1st Sess. 76-78 (1969), U.S.Code Cong. & Admin.News 1970, p.4007. In considering the intention of the provisions' drafters, courts have reasoned that section 1962(c) was intended to punish the person who conducts the affairs of the otherwise legitimate business in an illegal manner. "Such a distinction focuses the section on the culpable party and recognizes that the enterprise itself is often a passive instrument or victim of the racketeering activity." Bennett v. U.S. Trust Co., 770 F.2d at 315. Allowing identity of person and enterprise would permit punishment of the exploited "victim" enterprise as well as the infiltrator person or entity. This consequence is both unintended and undesirable.

Under the rule requiring district entities, however, § 1962(c) liability usually cannot be imposed on those organizations created solely for illegal purposes and operated to the detriment of third parties by corrupt directors or controlling partners. Consequently, an exception to the non-identity rule has at times been made for the institution that functions as both "perpetrator" and "victim." See, e.g., United States v. Hartley, 678 F.2d at 989 (because plaintiff could have named culpable corporate directors as defendant "association-in-fact" distinct from corporate enterprise, court "pierced the corporate veil" to allow corporation to be named as both defendant and enterprise).

It is important to realize, however, that corrupt organizations which conduct their own affairs by illegal means may often be subject to direct liability under

Under the rule requiring disclosure
entitled, however, § 100(2) liability
usually cannot be imposed on those
organizations created solely for illegal
purposes and operated in the interests of
third parties or groups. However, in
controlling matters. Consequently, an
exception to the non-liability rule has
been made for the individuals and
functions as both "perpetrator" and

"victim". See, e.g., United States v.
Barney, 218 F.2d 100 (2nd Cir. 1959).
Under these facts, corporate
disclosure as required "contribution to-
ward" distinct from corporate activities
must "assist the enterprise" in its
operation or be used as both disclosure
and enterprise.

It is important to note, however,
that during discussions with counsel
that our clients by illegal means may
often be subject to direct liability under

another section of RICO. Section 1962(a) prohibits the receipt and a subsequent investment of racketeering proceeds into an "enterprise." Under this section--which does not contain the language of subsection (c) implying that the person and enterprise must be distinct--a number of courts have rejected a non-identity requirement. At least three Courts of Appeals have concluded that "a corporation-enterprise may be held liable under subsection (a) where the corporation is also a perpetrator" and not merely a passive instrument of the racketeering activity. See Haroco, 747 F.2d at 402 (7th Cir.); Schofield, 793 F.2d at 31 (1st Cir.); see also Schreiber Distributing Co. v. Serve-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir.1986) (allowing corporation that is the "direct or indirect beneficiary" of pattern of racketeering activity to be both "person" and "enterprise" under 1962(a)).

When interpreted in this way, section 1962(a) provides one mechanism to punish such corrupt organizations by depriving them of their ill-gotten gains.

[12] It is thus apparent that the language of each section contemplates a different role the enterprise may play in a variety of corrupt schemes. See Haroco, 747 F.2d at 401. (Under the respective subsections of 1962, "the enterprise may play the various roles of victim, prize, instrument or perpetrator. The RICO liability of the enterprise should depend on the role played."). Through section (a), Congress provided for punishment of organizations which in fact gain from their wrong-doing by focusing on profits gleaned from illegal activities, thus "sparing" organizations that do not so profit. Section (c) likewise immunizes organizations which are merely "victims," but this result depends on the requirement

of non-identity of person and enterprise which also places some corrupt organizations beyond reach. The use of (c) to impose liability on some types of organizations covered by (a) carries the danger of exposing innocent organizations to prosecution. Absent the non-identity requirement, respondeat superior could operate to impose § 1962(c) liability on a corporation that is unaware of the racketeering activities of its agents and has not been enriched by those activities. Since we agree with the court in Schofield, 793 F.2d at 32, that "the concept of vicarious liability is directly at odds" with the Congressional intent behind § 1962(c), we think it wise not to risk this consequence by disturbing Congress' carefully crafted scheme. We therefore hold with those courts that forbid identity of person and enterprise under § 1962(c) and conclude that the original complaint

naming the Local as person and enterprise was properly dismissed.

Yellow Bus attempt to avoid this legal result by depicting the RICO enterprise as "association-in-fact" comprised of the Local and Woodward, an entity distinct from each of these named defendants. This attempt is unavailing. It is true that under the expansive § 1961 definition of "enterprise," some courts have permitted the enterprise to be defined as an association composed of some number of the distinct individual defendants or defendant corporations. See Cullen v. Margiotta, 811 F.2d 698, 729-30 (2d Cir.), cert. denied sub nom. Nassau County Republican Committee v. Cullen, 483 U.S. 1021, 107 S.Ct. 3266, 97 L.Ed.2d 764 (1987)("[W]e see no reason why a single entity could not be both the RICO 'person' and one of a number of members of the RICO 'enterprise.'"); Fustok v. Conti-commodity Services, Inc., 618

meeting the bones as person and anticipated

was greatly pleased.

Fellow has returned to work this day.

causing by feeling the skin surface as

the "sensation" is "sensation" of the

to be not working on every surface of

each of these and feeling

except as mentioned. It is the fact

under the surface a lot of feeling of

"sensation" is "sensation" of the

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

the sensation is the feeling as

F.Supp. 1074, 1076 (S.D.N.Y.1985) (group of individual corporate defendants may qualify as "association-in-fact" enterprise); see also United States v. Perholtz, 657 F.Supp. 603, 605 (D.D.C. 1986). But cf. Beck v. Cantor Fitzgerald & Co., 621 F.Supp. 1547, 1563 (N.D. Ill.1985) (association of defendants may constitute an "enterprise" only if that enterprise has a "separate and sufficiently lasting identity apart from the 'person' or 'persons' * * * who are employed [by] or associated with it."). Several courts, however, have disallowed a § 1962(c) claim where the relationship among the members of the enterprise association is the relationship of parts to a whole. That is, while the corporate or organizational defendant may itself be a member of the enterprise association, the member of the enterprise association may not simply be subdivisions, agents, or members of the defendant organization. See

Hanline v. Sinclair Global Brokerage Corp., 652 F.Supp. 1457, 1462 (W.D.Mo. 1987) (enterprise association of corporation with its employees not distinct from corporation defendant); see also Atkinson v. Anadarko Bank & Trust Co., 808 F.2d 438, 441 (5th Cir.), cert. denied, 483 U.S. 1032, 107 S.Ct. 3276, 97 L.Ed.2d 780 (1987) (bank, holding company, and three employees have no distinct existence apart from defendant bank); Tarasi v. Dravo Corp., 613 F.Supp. 1235, 1236-37 (W.D.Pa.1985) (corporate defendant may not be associated with its agent to form 1962(c) enterprise).

[13] In short, an organization cannot join with its own members to do that which it normally does and thereby form an enterprise separate and apart from itself. Where, as here, the organization is named as defendant, and the organization associates with its member to form the enterprise "association-in-fact," the

Handing W. Richard Eichel Browne's copy
522 W. Supp. 1487, 1488 (W.P. No. 1987)
(certified translation of corporation with
its employees not distinct from corporation
statement); see also Frederick V. Anderson
Evoy & Turner 221 F.2d 408, 411 (1st
Cir. 1955) 487-488, 1955, 195
444, 450, 95 A.2d 780 (1955) (same
holding company, and where employees have
no personal relationship with the company
same; United v. State Corp. 115 F.2d
1125, 1130 (1st Cir. 1941) (company
employees not to be associated with the
company for the purpose of taxation)
115 F.2d 1130, 1131 (1st Cir. 1941) (company
employees not to be associated with the
company for the purpose of taxation)
115 F.2d 1130, 1131 (1st Cir. 1941) (company
employees not to be associated with the
company for the purpose of taxation)
115 F.2d 1130, 1131 (1st Cir. 1941) (company
employees not to be associated with the
company for the purpose of taxation)
115 F.2d 1130, 1131 (1st Cir. 1941) (company
employees not to be associated with the
company for the purpose of taxation)

requisite distinctness does not obtain. As the district court pointed out, there is no difference between the union as an entity including Woodward as officer, and the union plus Woodward, since "the whole is no different than the sum of its parts in this context." Furthermore, allowing plaintiffs to generate such "contrived partnerships" consisting of an umbrella organization and its subsidiary parts, would render the non-identity requirement of section 1962(c) meaningless. We decline to permit such an "end run" around the statutory requirements.

B. "Participate in the Conduct of the Affairs"

The district court rejected Yellow Bus' attempt to charge the Local as a RICO defendant under § 1962(c) by amending the complaint to name itself as the "enterprise." In addition to objecting to the timing of the request, the court

concluded that the amended complaint would fail to state a proper RICO claim because the union's acts were not committed in the conduct of Yellow Bus' affairs; rather, Yellow Bus was merely the "setting" for the union's activities. We disagree with the district court's assessment of the relationship between the bus company and the Local's alleged conduct, and reject as overly restrictive any interpretation of the language of § 1962(c) which would necessitate a dismissal of the RICO claim against the Local in this case.

Unlike "enterprise" and "pattern," the terms "conduct," "participate" and "through" do not have statutory definitions. The Act has been challenged as unconstitutionally vague for this reason. See United States v. Stofsky, 409 F.Supp. 609 (S.D.N.Y.1973). In rejecting the vagueness argument the court in Stofsky explained:

[T]he statute does not define [the] connection by distinguishing between predicate acts which play a major role or a minor role, or any role at all in what might be seen as the usual operation of the enterprise; nor does it require that such acts be in furtherance of the enterprise, as defendants suggest it must.

In this Court's view, the statute fails to state these requirements because Congress did not intend to require them in these terms. The perversion of legitimate business may take many forms. The goals of the enterprise may themselves be perverted. Or the legitimate goals may be continued as a front for unrelated criminal activity. Or the criminal activity may be pursued by some persons in direct conflict with the legitimate goals, pursued by

others. Or the criminal activity may, indeed, be utilized to further otherwise legitimate goals. No good reason suggests itself as to why Congress should want to cover some, but not all of these forms; nor is there any good reason why this court should construe the statute to do so. It plainly says that it places criminal responsibility on both those who conduct and those who participate, directly or indirectly, in the conduct of the affairs of the enterprise, without regard to what the enterprise was or was not about at the time in question. This may be broad, but it is not vague.

Id. at 613. Thus in Stofsky's view, the "requisite nexus" between unlawful acts and enterprise activities was left undefined "for the simple reason that no particular degree of interrelationship is required."

United States v. Field, 432 F. Supp. 55, 58 (S.D.N.Y.1977) (citing Stofsky).

Notwithstanding Stofsky's refusal to clarify the reach of § 1962(c), courts have struggled to define the scope of behavior chargeable under that section. Attempts have been made to formalize the intuition that § 1962(c) was not meant to punish predicate activity which forms no part of the ordinary affairs of the enterprise, and is only incidentally related to its day-to-day business. See, e.g., United States v. Yonan, 623 F.Supp. 881, 883 (N.D.III.1985), aff'd in part and rev'd in part, 800 F.2d 164 (7th Cir.1986) (seeking a test for "association" and "participation" to disqualify, for example, "robbing a bank twice"). Some federal courts have required that the defendant participate in the "direction" or "management" of the organization, or have fashioned other rules to restrict the universe of relationships

United States v. [illegible] 1975

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

1975-1976 (1975-1976)

subject to 1962(c) liability. See, e.g. Bennett v. Berg, 710 F.2d 1361, 1364 (8th Cir.), cert. denied sub nom. Prudential Ins. Co. v. Bennett, 464 U.S. 1008, 104 S.Ct. 527, 78 L.Ed.2d 710 (1983) ("[S]ome participation in the operation or management of the enterprise itself" is ordinarily required); Bank of America v. Touche Ross & Co., 782 F.2d 966, 970 (11th Cir. 1986) (chargeable predicate acts must be "helpful or necessary" to the operation of the enterprise); United States v. Ladmer, 429 F.Supp. 1231, 1244 (E.D.N.Y. 1977) (dismissing a RICO charge based on unauthorized expenditure of union funds for personal travel expenses because unrelated to the enterprise's "essential" or "core" function).

Other federal courts, however, merely impose an open-ended requirement that the predicate acts relate to, or have some effect upon, the affairs of the enterprise.

See, e.g., United States v. Welch, 656 F.2d 1039, 1060-62 (5th Cir. 1981, cert. denied sub nom. Cashell v. United States, 456 U.S. 915, 102 S.Ct. 1767, 72 L.Ed.2d 173 (1982)). (holding that 1962(c) requires a "sufficient nexus between the racketeering activities and the affairs of the enterprise" and rejecting the requirement of "benefit" to the enterprise); United States v. Carter, 721 F.2d 1514, 1525-27 (11th Cir.) cert. denied sub nom. Morris v. United States, 469 U.S. 819, 105 S.Ct. 89, 83 L.Ed.2d 36 (1984) (allowing "proof of effect on the common everyday affairs of the enterprise"). In United States v. Scotto, 641 F.2d 47, 54-55 (2d Cir.1980), cert. denied, 452 U.S.961, 101 S.Ct. 3109, 69 L.Ed.2d 971 (1981), union officials were accused of forgiving contract requirements and steering business in exchange for illegal payoffs. The court refused to embrace the "core functions" formula of

Ladner, or the Berg requirement that the conduct relate to the operation or management of the enterprise. Citing with approval to the district court decision in United States v. Stofsky, the Scotto court fashioned a two part test for "conducting the activities of an enterprise," holding that the proper connection is established when "1)one is enabled to commit the predicate offenses solely by virtue of [one's] position in the enterprise or involvement in or control over the affairs of the enterprise, or 2) the predicate offenses are related to the activities of that enterprise." Id. at 54. The court went on to note that "[s]imply committing predicate acts which are unrelated to the enterprise or one's position within it would be insufficient." Id. Another Court of Appeals restated the Scotto test in United States v. Cauble, 706 F.2d 1322 (5th Cir. 1983), cert. denied, 465 U.S. 1005,

104 S.Ct. 996, 79 L.Ed.2d 229 (1984), finding the demands of § 1962(c) satisfied when "the defendant's position in the enterprise facilitated his commission of the racketeering acts" and "the predicate acts had some effect on the lawful enterprise." Id. at 1333; see also United States v. Provenzano, 688 F.2d 194, 200 (3d Cir.), cert. denied, 459 U.S. 1071, 103 S.Ct 492, 74 L.Ed.2d 634 (1982) (following Scotto).

We decline to adopt a more restrictive standard than that enunciated in Cauble and Scotto. Section 1962(c) of RICO refers to direct as well as indirect participation in the enterprise's affairs, and imposes no requirement that participation be at the management level or relate to "core functions." Moreover, Congress has expressed its intention that RICO be "liberally construed to effectuate its remedial purposes." Pub.L. No. 91-452 §

904(a), 84 Stat. 947 (1969). The inappropriateness of artificially restricting the types of relationships satisfying § 1962(c) is especially apparent in cases of predicate acts committed by enterprise "outsiders" rather than "insiders". In such instance, a stringent test threatens to frustrate RICO's broad remedial purpose. See United States v. Elliott, 571 F.2d 880, 903 (5th Cir.), cert. denied sub nom. Delph v. United States, 439 U.S. 953, 99 S.Ct. 349, 58 L.Ed.2d 344 (1978) ("The substantive proscriptions of the RICO statute apply to insiders and outsiders--those merely 'associated with' an enterprise--who participate directly and indirectly in the enterprise's affairs. [Citations omitted.] Thus the RICO net is woven tightly to catch even the smallest fish, those peripherally involved with the enterprise.").

Mindful of these flexible terms, a

number of courts have permitted RICO actions in bribery cases against those seeking to influence organizations in which they hold no official position of authority. See, e.g. United States v. Forsythe, 560 F.2d 1127, 1136 (3d Cir.1977) (reversing a lower court holding that a magistrate who accepts bribes from a bonding company is not sufficiently "associated with" the bonding company enterprise's affairs); see also United States v. Bright, 630 F.2d 804, 830 (5th Cir. 1980) (holding that bribing and influencing a sheriff qualified as participation in the affairs of the sheriff's office); United States v. Lee Stoller Enterprises, 652 F.2d 1313, 1320-21 (7th Cir.), cert. denied, 454 U.S. 1082, 102 S.Ct. 636, 70 L.Ed.2d 615 (1981) (businessman paying kickbacks to sheriff in exchange for lucrative contracts held to participate in sheriff's office affairs);

United States v. Blackwood, 768 F.2d 131, 137-38 (7th Cir.), cert. denied 474 U.S. 1020, 106 S.Ct. 569, 88 L.Ed.2d 554 (1985) (applying Cauble to allow § 1962(c) RICO charge against a police officer charged with soliciting bribes to influence county court case disposition); United States v. Yonan, 800 F.2d 164, 167 (7th Cir. 1986) cert. denied, 479 U.S. 1055, 107 S.Ct. 930, 93 L.Ed.2d 981 (1987) (reversing the dismissal of a RICO count against a criminal defense attorney charged with bribing a state district attorney).

The Yonan court stressed that defendant need not have a stake or ongoing interest in the enterprise, nor any direct contact with managers of the enterprise, as long as predicate acts formed part of a "business relationship." Id. at 168. In a context not involving official corruption, the court in State of New York v. O'Hara, 652 F.Supp. 1049, 1053-54

(W.D.N.Y.1987), applied the analysis in Yonan to uphold a RICO claim against a private contractor who allegedly submitted fraudulent bids on a municipal waste clean-up contract. The court held that this activity fulfilled the statutory requirement of association with the city of Niagara Falls through indirect participation in its affairs. See also United States v. Starnes, 644 F.2d 673, 679 (7th Cir.), cert. denied, 454 U.S. 826, 102 S.Ct. 116, 70 L.Ed.2d 101 (1981) (arsonist hired by company official to "torch" its headquarters "associates with" and "participates" in the company's affairs under § 1962(c)).

[14] The alleged relationship between the Local and Yellow Bus falls well within the scope of activity contemplated by the words of the statute, and meets the appropriately minimal requirements set out in Scotto, Cauble, and Yonan and their

progeny. As in Yonan, Yellow Bus and the union had a full-fledged "business relationship"--Yellow Bus was not merely a "setting" for crimes otherwise unrelated to the company's affairs. As we have shown, it matters not that Woodward and the Local did not direct or manage the "core" day-to-day transportation activities of Yellow Bus, or that the union initially exerted its influence over the conduct of employees, rather than management. A strike for recognition of the union as a collective bargaining representative is an activity sufficiently related to the company's ongoing role as a business enterprise and employer to establish the requisite nexus. Although the Local and the bus company were associated for a limited period, their relationship had vital significance for the economic destiny of Yellow Bus. The elaborate legal structure which governs all aspects of

management-labor interaction only serves to emphasize that a strike by a union seeking to bargain with an employer is an important "affair" of the employer company. More often than not, it is a momentous event in the life of that enterprise.

Having established that the strike and organizational effort were "affairs" of Yellow Bus, we must decide whether appellees' actions, if proved, would amount to participation in the conduct of those affairs "through a pattern of racketeering activity." Yellow Bus alleges that the violence was committed with the intent to influence the company's conduct. Allegations of a requisite number of intentional destructive acts or threats during the strike would alone satisfy the participation requirement for the purpose of stating a RICO claim. Any further showing of success in influencing concrete company choices through violent extortion

is unnecessary. In contending that appellees chose to avail themselves of violent tactics as one way of conducting the strike, Yellow Bus charges that appellees participated in the conduct of the company's affairs for the duration of the strike by means of these activities, among others. This clearly serves to fulfill the requirement of participation in the affairs of the company.

In Northwestern, the Court reaffirmed its postulate that RICO could not be given a narrow construction in light of the language and legislative history of the Act, Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985), and then addressed the nettlesome problems of "developing a meaningful concept of 'pattern' within the existing statutory framework...." -- U.S. at --, 109 S.Ct. at 2899. the Court emphasized that RICO does not require separate illegal

schemes to constitute a "pattern"; nor is the statutory requirement established "merely by providing two predicate acts...." Id. Instead, the Court recalled the legislative history that it had noted in Sedima, and concluded that "'[i]t is this pattern of continuity plus relationship which combines to produce a pattern.'" Id. -- U.S. at --, 109 S.Ct. at 2900 (quoting S.Rep. No. 617, 91st Cong., 1st Sess. 158 (1969), U.S. Code Cong. & Admin. News 1970, p.4007 (emphasis added)). The Court determined that, in summary, "RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering activity a plaintiff ... must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." Northwestern, -- U.S. at --, 109 S.Ct. at 2899.

As previously stated, there is little

to be urged against the "relatedness" of the predicate acts alleged by appellant. While the "continuity" of the alleged predicate acts is a closer question because of the relatively short duration of the strike, these acts could, if proved, establish "a distinct threat of long term racketeering activity, either explicit or implicit." Id. --U.S. at--, 109 S.Ct. at 2902. In any event, the cause cannot be pretermitted at the stage that the District Court determined. At least until appellants have an opportunity to amend and are put to proof, the RICO count cannot be terminated.

V. RULE 15(A) LEAVE TO AMEND

[15] Finally, we hold that the district court abused its discretion to the extent that it relied on lack of timeliness to justify its refusal to grant leave to amend. Fed.R. Civ.P. 15(a) declares that leave to amend "shall be freely given when

to be urged against the "relativism" of
the predicate logic alleged by Hegel.
While the "contingency" of the relation
between logic and nature is a matter of fact,
of the scientific method, it is not
ethics, logic, or even a matter of
method. "A method" is not a method,
methodology is not a method, but a
method. "Method" is not a method, but a
method. In the sense that the method is
methodology, the method is not a method,
methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.

Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.
Methodology is not a method, but a method.

justice so requires." As the Supreme Court forcefully states in Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962), "this mandate is to be heeded." These pleading rules were designed to facilitate a proper decision on the merits, and the opportunity to test the merits should ordinarily be accommodated if injustice will not otherwise result. See generally 6 C. Wright & A. Miller, Federal Practice and Procedure § 1484 (1971).

The reason recognized as justifying denial of motion to amend--"undue delay, bad faith or dilatory motive * * *, repeated failure to cure deficiencies * * *, undue prejudice to the opposing party * * *, futility of the amendment," 371 U.S. at 182, 83, S.Ct. at 230--are not applicable here. Only two months elapsed between the March 31, 1984 hearing at which the court first expressed doubts about the deficiencies of the original pleading and

Yellow Bus' request to amend those pleadings. When the court ruled in late June on the Local's April 13 motion to dismiss the original RICO claim against the union, commencement of trial was still over eight months away. Consideration of this timetable indicates that Yellow Bus moved with more than reasonable alacrity to correct its pleadings, and that ample time was available to defendants for trial preparation. Amendment of the complaint, in any event, would not have imposed any additional burdens on the Local because the restated RICO claim required consideration of no new facts and arguments. Since there was no evidence of prejudice to appellees or of deliberate delay or bad faith, leave to amend was appropriate and should have been granted.

CONCLUSION

We remand to the district court for a trial on the RICO charges after Yellow Bus

Yellow Bus' request to amend those
pleadings. When the court ruled in late
June on the local's April 15 motion to
dismiss the original NICO claim against the
union, commentaries of local and NICO were
eight months away. Consideration of this
disposable industry that Yellow Bus moved
with more than reasonable elasticity in
conducting proceedings, and that people have
and willingness to defendants for trial
prosecution. Amendment of the complaint
in any event, would not have injured my
additional evidence on the local because the
revised NICO claim revised consideration
of on the facts and arguments. Since there
was no evidence of prejudice to applicant
on the defendant's delay of local trial,
it would use appropriate and would have
been granted.

CONCLUSION

As stated on the NICO motion for a
trial on the NICO motion after Yellow Bus

has had the opportunity to lodge revised pleadings. We also reinstate the judgment against the Local for malicious destruction of property. After considering the remaining contentions on appeal, we find them to be without merit. Accordingly, the judgment of the district court is affirmed in part and reversed in part, and the case is remanded to the district court for further proceedings.

HARRY T. EDWARDS, Circuit Judge,
concurring:

I have nagging doubts about our holding that "the strike and organizational effort were 'affairs' of Yellow bus," maj. op. at 144, and that, consequently, plaintiff might be able to state a cause of action under section 1962(c) of RICO. This result seems strangely at odds with certain fundamental precepts of labor law and collective bargaining. However, I recognize that this holding finds support

in the case law, and that it is not inconsistent with RICO's broad remedial purpose. I therefore concur, albeit with pause.

in the case law and that it is not
inconsistent with NICO's broad remedial
purpose. I therefore agree with the
court.

James F. WOODWARD, Plaintiff,

v.

Michael DIPALERMO, et al.,

Defendants.

YELLOW BUS LINES, INC., et

al., Plaintiffs,

v.

DRIVERS, CHAUFFEURS &

HELPERS, LOCAL UNION

639, ET AL., Defendants.

Civ. A. Nos. 82-3154, 83-1232.

United States District Court

District of Columbia

Jan. 16, 1986.

Thomas G. Corcoran, Jr., Washington,
D.C., for Plaintiff.

Hugh J. Beins, John R. Mooney, Beins,
Axelrod and Osborne, Washington, D.C., for
defendants.

MEMORANDUM

FLANNERY, District Judge.

In this case, a jury returned a

JAMES F. WOODWARD, President.

Director of the Board of Directors.

California

THE NEW YORK TIMES, INC., et

al., Plaintiffs.

v.

DEFENDERS, CONSISTING OF

HAROLD L. BROWN, et al.

et al., Defendants.

Case No. 24-2121, 24-2122.

United States District Court

District of Columbia

Jan. 12, 1924.

James F. Woodward et al., Defendants.

vs. The Plaintiff.

That the said James F. Woodward et al.

have not and cannot, and are not

entitled to

any

damages, costs, or

in this case, and that

the

verdict in favor of plaintiffs on three counts: malicious destruction of property, intentional interference with contractual relations, and abuse of process. In response to a special verdict form, the jury awarded damages of approximately \$56,000 against defendant James Woodward and approximately \$77,000 against defendant union. This matter now comes before the court on defendants' motion for judgment notwithstanding the verdict, or alternatively, for modification of the judgment or a new trial. Because the verdicts are obviously against the clear weight of the evidence on the counts alleging intentional interference with contractual relations and abuse of process, the court will set aside the jury verdicts in favor of plaintiffs on those counts, and enter judgments notwithstanding the verdicts in favor of the defendants. On the count alleging malicious destruction of

verdict in favor of plaintiff on three counts: malicious destruction of property, intentional interference with contractual relations, and abuse of process. In response to a special verdict form, the jury awarded damages of approximately \$100,000 against defendant James Woodard and approximately \$25,000 against defendant union. This matter now comes before the court on defendant's motion for judgment notwithstanding the verdict, or alternatively for vacation of the judgment of a new trial. Before the verdict was rendered against the state, evidence was carefully reviewed and weighed in the balance on the issues alleging intentional interference with contractual relations and abuse of process. The court will not guide the jury verdict in favor of plaintiff on these counts, and since judgments notwithstanding the verdict in favor of the defendant, the court alleging malicious destruction of

property, the court will modify the verdict.

I. Background

Plaintiff Yellow Bus Lines Inc. ("Yellow Bus") was a Virginia corporation located in the District of Columbia and engaged in providing bus service for schools. In November of 1981, some eight employees of Yellow Bus struck for recognition of defendant Drivers, Chauffeurs & Helpers Local Union 639 ("Local 639"). Defendant Woodward was the Local 639 representative who sought to organize the employees and to establish Local 639 as their collective bargaining representative.

Though the company continued to operate throughout a four-day strike in November of 1981, plaintiffs contended that Local 639 and Woodward engaged in a systematic campaign to undermine the company. This was allegedly done during

property, the court will modify the

verdict.

7. Damages

Plaintiff seeks the sum of \$100,000.

(Yellow Book) is a Virginia corporation

located in the County of Loudoun and

incorporated in 1900. It has a capital

stock of \$1,000,000. It is a public

utility company and is engaged in the

business of supplying electricity to

the County of Loudoun and the City of

Leesburg, Virginia. It has a long and

successful record in the business of

supplying electricity to the public.

It has a large and efficient staff of

engineers and mechanics and is equipped

with the latest and most efficient

apparatus for the production and

distribution of electricity.

It has a long and successful record in

the business of supplying electricity to

the public and is a valuable asset to

the community.

the strike by encouraging employees to commit various acts of vandalism and after the strike by instructing the employees to damage property and be late or absent. Plaintiffs alleged that Woodward threatened Yellow Bus managers that if Yellow Bus resisted unionization, then litigation and other tactics would be used to hurt Yellow Bus. The labor dispute continued after the strike, and in the summer of 1983, Yellow Bus discontinued most of its operations, alleging that defendants' activities caused its demise.

Proceedings in this court were initiated on November 4, 1982, when Woodward filed a suit alleging false arrest against D.C. police officer Michael Dipalermo, the District of Columbia, and Yellow Bus. Plaintiffs counterclaimed with federal and state claims in April of 1983 against Woodward and Local 639. By October 1984, this court had dismissed all of the

the strike by encouraging employees to
commit various acts of vandalism and other
the strike by instructing the employees to
damage property and be late or absent.
Stainlett alleged that Korman's statements
value his manager that it takes the
concerned in... action, then litigation and
other parties would be used to help value
has. The labor dispute continued after the
strike, and in the summer of 1957, before
the disallowed most of the operations.
Alleged that statements, statements caused

the house

Proceedings in this court were
initiated on November 1, 1957, when
Korman filed a writ of habeas corpus
against O.C. for his alleged arrest.
Following the filing of the writ, the
court and the parties agreed to a
settlement and were closed on April 15, 1958.
Korman Korman and Local 100, by O.C.,
that the writ and settlement are of no

federal claims, but elected to retain jurisdiction over the state claims. In May of 1984, Woodward's claim for false arrest was settled with the District of Columbia and was dismissed against Yellow Bus on Woodward's motion to dismiss.

On February 18, 1985, trial commenced on the remaining claims. On March 8, 1985, a verdict was returned in favor of plaintiffs on three counts. Defendants now contend that notwithstanding the jury's verdict, judgment should be granted defendants because there was insufficient proof on each count.

Judgment notwithstanding the verdict should be entered when "the evidence, together with all inferences that can reasonably be drawn therefrom, is so one-sided that reasonable men could not disagree on the verdict." Coburn v. Pan American World Airways, Inc., 711 F.2d 339, 342 (D.C.Cir.1983). Of course, only when

the probative facts are undisputed and reasonable minds can draw but one inference does the question become one of law for the court. Aylor v. Intercounty Constr. Corp., 381 F.2d 930, 934 (U.S.App.D.C. 1967). An additional element in the standard of review exists in this case: by federal law, no union, agent or member of a union shall be held liable in any court for the unlawful acts of individual officers or members except upon "clear proof of actual participation in, or actual authorization of, such acts...." 29 U.S.C. § 106 (1982).

The counts and the evidence supporting them are each discussed separately.

II. Interference with Business Contract

[1] The largest portion of the jury's award (cumulatively \$100,000) was based on a finding that defendants intentionally interfered with the 1982-83 contract between Yellow Bus and the Charles Smith Jewish Day School ("JDS"). In order to

The predicate facts are undisputed and
responsible minds can draw but one inference
from the facts and become one of law for the
court. Ex parte v. International Contract Corp.
291 F.2d 410; 312 U.S. 469 (1942). An
additional witness is the standard of
review which in this case by Federal
law, no motion, agent or member of a group
shall be held liable in any case but the
individual acts of individuals without an
unbroken except upon clear proof of actual
participation in, or actual contribution
to, such activity. 312 U.S. 469 (1942).

The record and the evidence supporting
them are each discussed separately.

1. International Contract Corp.
(a) The largest action of the Corp.
was taken January 21, 1942, when it
sought to acquire International
Contracting Corp. with the 1942-43 contract
between the two and the latter's assets
which day before (1942). In order to

prevail on this claim, there must be clear proof of a specific intent to procure the breach of a specific contract thereby causing a specific and ascertainable injury. Tuxedo Contractors, Inc. v. Swindell-Dressler Co., 613 F.2d 1159 (D.C.Cir.1979).

[2] The only specific contract mentioned at trial was between Yellow Bus and JDS, which was entered into in October of 1982. The Chairman of the JDS Transportation Committee, Howard Wilchins, testified without impeachment that JDS's difficulties with Yellow Bus occurred almost one year after the strike, after the contract was negotiated in October of 1982. Transcript, at 1507, 1508. It was in January of 1983 that JDS took action to curtail the contract because of Yellow Bus' poor service. Transcript, at 1509. But even then the contract continued. It was only when the president and route manager

...on this case, there must be clear
proof of a specific intent to procure the
issuance of a specific contract thereby
assuming a specific and ascertainable
injury. United Contractors, Inc. v.
California-Central Co., 113 F.2d 1112
(9th Cir. 1941).

...The only specific contract
mentioned in this case between United and
California-Central was entered into in 1938
at 1938. The duration of the
Investigation Committee, however, which
lasted without interruption from 1938
until 1941, with United and California-Central
almost one year after the date, after the
contract was completed in 1938 at 1938.
Therefore, at 1938, 1938. It was in
January of 1938 that the case action in
which the contract between United and
California-Central was entered at 1938. And
more than the contract entered, it was
only when the contract and some other

of Yellow Bus, Paula Westgate, informed JDS of Yellow Bus' financial problems with the IRS that Wilchins terminated the contract. Transcript, at 1511; Defendants' Exhibit 22.

This court finds that there is no proof, clear or otherwise, of a causal connection between defendants alleged conduct and the termination of the contract. The two reasons for termination of the contract were Yellow Bus' poor performance and its difficulty with the IRS. Transcript, at 921, 1513. Neither of these arose from defendants' activities. The plaintiffs also had to prove that defendants intentionally produced a breach of the contract, yet there was no evidence supporting this element.

While driver attendance may have been a problem, Paula Westgate admitted at trial that defendants were not responsible for the problems of an overwhelming majority of

of Yellow Man, Paul Westgate. Informant
of Yellow Man, informant problem with
the first witness terminated the contract
Transcript, at 1211 Defendant, Exhibit

12.

This court finds that there is no
proof, direct or circumstantial, of a causal
connection between defendant's alleged
conduct and the termination of the
contract. The law requires for termination
of the contract that there be a
defendant and the plaintiff with the
the Transcript at 1211. Defendant
there were two defendants, not one.
The plaintiff also did not prove that
defendant intentionally induced a breach
of the contract, yet there was no evidence
supporting this element.

While direct evidence may have been
a problem, Paul Westgate testified at trial
that defendants were not responsible for
the breach of the contract as a result of

drivers. In fact, all of plaintiffs' witnesses admitted that they had no proof of defendants' responsibility for any of the drivers' absenteeism, tardiness, or maintenance problems. Rather, the evidence showed that the company had significant drug and alcohol problems, and had internal problems among the three owners: Paula Westgate, Maria Triggs (secretary-treasurer and office manager), and Peter McKinnon (vice president and company mechanic). In fact, McKinnon at one point attempted to destroy the company, declared he was Christ, and threatened to murder Westgate, his sister. Moreover, no evidence was introduced at trial that any of the vandalism occurred after the allegedly affected contract was executed.

There was also no evidence that defendants were responsible for the company's tax liabilities. Maria Triggs testified that the company had difficulty

paying its taxes from its inception. The obligations stemmed from the company's withholding FICA and social security deductions from employees, but then not remitting the deducted amounts to the federal government. This practice began June of 1981, before the union ever started negotiating with Yellow Bus.

The evidence pointed to a different cause for Yellow Bus' poor performance after the execution of the 1982-83 contract with JDS: the deterioration of the buses. Transcript, at 1110-1111, 1509. That deterioration came about from the age of the buses: Yellow Bus never bought a new bus and every model was a 1971 or earlier model. Transcript at 578-579, 586-587. By January 1983, half of the buses owned by Yellow Bus were inoperable. Transcript, at 361. After McKinnon departed in the fall of 1982 there was no one skilled enough to keep the buses running. Transcript, at

paying the same price for location. The
obligations seemed from the company's
attending to the and would be
industrial time employees, but then the
existing the business source of the
Federal Government. This practice began
June of 1961, before the other was
negotiating with Yellow Sea

The various phases of a situation
which the Yellow Sea, from 1961 to 1962
along the coastline of the Yellow Sea
with the the coastline of the Yellow Sea.
However, it is not clear that
information was given to the Yellow Sea
the Yellow Sea, from 1961 to 1962
and the Yellow Sea, from 1961 to 1962
model, from 1961 to 1962, from 1961 to 1962
January 1961, from 1961 to 1962, from 1961 to 1962
Yellow Sea, from 1961 to 1962, from 1961 to 1962
the Yellow Sea, from 1961 to 1962, from 1961 to 1962
the Yellow Sea, from 1961 to 1962, from 1961 to 1962
the Yellow Sea, from 1961 to 1962, from 1961 to 1962

1111. This was when JDS sent several complaints to Yellow Bus. Transcript, at 234. In January of 1983, the school reduced the number of Yellow Bus routes, Transcript, at 1508-09, but the school intended to continue its contractual relationship with Yellow Bus. Transcript, at 1510. Only when JDS learned of Yellow Bus' tax liability to the IRS did JDS terminate the Yellow Bus contract. Transcript, at 1511-13, 1137, and 938.

Finally, there was no clear proof of the damages suffered as a consequence of the alleged interference. The award of \$100,000 is not supported by any specific evidence in the record; this single contract could not have generated such profits. First, it only generated approximately \$2,232 of gross income per day for a term of 183 school days per year. Second, the contract was totally performed for the first five months and there was 80%

performance for the next two months. Defendants' Exhibit 21. This only leaves lost profits from two routes for two months (grossing approximately \$10,400) and all routes for two months (grossing approximately \$49,250). After subtracting cost of performance, this leaves a figure nowhere near \$100,000.

Plaintiffs respond that Triggs and Westgate's testimony, supported by the company's tax returns, showed that the company's profits went from approximately \$3,000 the first year to approximately \$20,000 the second year. Though the buses were old, the company almost tripled its business from 1979 to 1981. After the strike, absenteeism increased due to the union activity. Plaintiffs' Exhibit 19(a). That increase led to losses of \$128,517. Plaintiffs' Exhibits 17 and 19(d). Even if this were so, such damages are not tied to the contract in issue for 1982-83, and

performance for the next two months.
Performance, Exhibit 11. This only shows
last profits from two months for the month
following approximately 1950-1951 and all
other for two months following
approximately 1949-1950. After subtracting
cost of performance, this leaves a figure
negative near \$100,000.

Altimet's report that this and
Newport's estimate, supported by the
company's tax returns, shows that the
company's profits went from approximately
\$1,000 the first year to approximately
\$20,000 the second year. Though the same
year 1951, the company claims, raised the
profits from 1950 to 1951. After the
same adjustment showed that the
company's profits went from 1950 to 1951.
That income and all losses of \$125,000.
Altimet's Exhibit 17 and 18. This is
this case in which changes are not made to
the contract is from 1950 to 1951 and

therefore cannot be used to determine compensation on that count.

Thus, plaintiffs have failed to show intentional procurement of a breach since they failed to demonstrate that defendants' actions contributed in any way to JDS's decision to terminate the contract. Further, plaintiff's evidence provided an inadequate showing of damages from the breach. Therefore, this court must set aside the verdict on this count and grant judgment to defendants.

III. Abuse of Process

[3] To prove abuse of process, plaintiffs had to show: (1) the issuance of legal process; (2) an ulterior purpose; (3) an improper act in the use of process; and (4) actual injury. Jacobson v. Thrifty Paper Boxes, Inc., 230 A.2d 710, 711 (D.C.App.1967).

[4] Element (1) was not in dispute. With regard to elements (2) and (3),

therefore cannot be used to determine
competence on that count.

Thus, while the facts listed on above
document are consistent with a finding of
competence, they fail to demonstrate that defendant
was competent to stand trial at the time of the
decision to prosecute. The evidence
further indicates that defendant was
inadequately informed of charges from the
prosecutor. Therefore, this court must set
aside the verdict on this count and grant
judgment to defendant.

III. Issues of law

- (1) To prove guilt of murder,
prosecutor had to show (1) the defendant
killed another, (2) an unlawful purpose,
(3) an unlawful act in the use of weapons,
and (4) actual intent. Evidence is sufficient
to prove each of these elements. The State has
met its burden of proof.
- (2) Where the State has met its burden
with respect to elements (1) and (2),

plaintiffs alleged that Woodward filed his lawsuit to gain information pertaining to his impending criminal trial and that Woodward offered to withdraw the suit if the company would pay its drivers five dollars per hour. In this action, plaintiffs' burden was to show by clear proof that Woodward's suit against plaintiffs resulted in a perversion of the judicial process and achieved some end not regularly contemplated by the law. Morowitz v. Marvel, 423 A.2d 196, 198 (D.C.1980). Such perversion requires a gross deviation from what is considered acceptable by the community. Epps v. Vogel, 454 A.2d 320, 324 (D.C.App. 1982).

[5] This court finds that no reasonable trier could find on this evidence that an abuse of process occurred. Woodward testified without contradiction that his attorney alone made the decisions as to when and how to pursue discovery in

plaintiffs alleged that Woodward failed to
insure to gain information pertaining to
the defendant's original trial and that
Woodward failed to advise the jury of
the company's policy to advise five
dollars per hour in ~~the~~ action.
Plaintiffs further seek to show by clear
evidence that Woodward's suit against
plaintiffs resulted in a settlement of the
judicial process and achieved some end not
regularly compensated by the law.
Woodward v. ... 211 A.2d 104 (Pa.
1965) 1965. Plaintiff's complaint is
dismissed with costs and is considered
satisfactory by the court.
Page 104 & 105, 106 (A.2d 104-105)
101. This court finds that the
defendant's trial could find on this
evidence that in some of process occurred
Woodward's settled without contribution
that his attorney alone made the decision
as to when and how to pursue litigation.

Woodward's case. The discovery never actually occurred, at plaintiffs' request, until after the criminal case was dismissed. Sufficient evidence came out at trial regarding the peculiarities of Woodward's arrest which refute any finding of "perversion" in the filing of his suit. In Woodward's civil suit for false arrest, co-defendants with Yellow Bus settled the case for more than three thousand dollars (\$3,000). This is further proof that there was no basis for a jury finding that Woodward's filing of his civil suit resulted in a perversion of the judicial process.

IV. Malicious Destruction of Property

[6] To find malicious destruction of property, the jury had to find clear proof that: (1) it was defendants that destroyed the property; (2) it was not the property of the defendants; (3) defendants destroyed the property maliciously; and (4) the

Howard's case. The discovery never
actually occurred at his office, but
until after the trial, there was
evidence. Subsequent evidence was not at
trial. The jury was told that
Howard's story which was the finding
of "pretext" on the issue of his wife.
It was not a claim that the claim was
unsubstantiated with the fact that the
case for more than three thousand dollars
was \$10,000. This is the same case that was
not the basis for a new finding that
Howard's claim on his claim was
intended as a pretext for the evidence
presented.

17. Subsequent evidence of pretext
(b) The claim evidence presented on
pretext. The jury was told that the
claim was not substantiated with the evidence
that it was not the pretext
of the pretext. (c) Subsequent evidence
the evidence was not the pretext.

property destroyed had some value. Nichols v. United States, 343 A.2d 336, 341 (D.C.App. 1975).

[7, 8] The jury found that these elements had been met and so awarded to Yellow Bus \$1,280 against Woodward and \$1,920 against Local 639. During the four-day strike in November of 1981, there was sufficient evidence to find defendant Woodward liable for damages sustained during that four-day period. There was circumstantial evidence linking Woodward to the various items introduced into evidence, such as rocks, strips of wood and a curtain rod both with nails protruding, and a beer can with nails in it. These items of physical evidence coupled with the threats by Woodward and other strikers made in Woodward's presence provide a sufficient evidentiary basis for the jury to hold Woodward responsible for the damages sustained during the period of the four-day

strike. The plaintiffs failed, however to provide clear proof that Local 639 was implicated in any way in the destruction of the property or that it ratified Woodward's actions in any manner. Therefore, the judgement against Local 639 must be set aside. Defendant Woodward's motion to set aside the verdict against Woodward on the count will be denied.

Judgement will be entered in accordance with the foregoing.

JUDGMENT

After consideration of defendants' motion for judgment notwithstanding the verdict, or alternatively, for modification of the judgment or for a new trial, the opposition thereto, and the entire record herein, it is, by the court, this 16th day of January, 1986,

ORDERED, ADJUDGED, and DECREED that the motion for judgment notwithstanding the verdict is granted with regard to defendant

SECTION. The Committee failed, however, to
provide these facts that would be
indicated in any way in the testimony. The
property in this connection was
acquired in any manner. The fact that
judgment against local law was not
made. The fact that the property was
acquired in any manner was not
indicated in any way in the testimony.

PROPERTY. The fact that the property
was acquired in any manner was not
indicated in any way in the testimony.

PROPERTY. The fact that the property
was acquired in any manner was not
indicated in any way in the testimony.

PROPERTY. The fact that the property
was acquired in any manner was not
indicated in any way in the testimony.

Drivers, Chauffeurs & Helpers Local Union 639 and judgment is entered in favor of defendant Drivers, Chauffeurs & Helpers Local Union 639 on all counts; and it is further

ORDERED, ADJUDGED, and DECREED that the motion for judgment notwithstanding the verdict is granted with regard to defendant James Woodward on the counts of tortious interference with contractual relations and abuse of process, and judgment is entered in favor of James Woodward on those counts; and it is further

ORDERED, ADJUDGED, and DECREED that the motion for judgment notwithstanding the verdict is denied with regard to defendant James Woodward on the count of malicious destruction of property, as is defendants' alternative motion for modification of the judgment or for a new trial; and it is further

ORDERED, ADJUDGED and DECREED that

Delivered. Christy was a native local woman
and judgment is entered in favor of
Christy. Christy is a native local woman
and judgment is entered in favor of
Christy.

Christy

Christy, ADJUDGED, and ordered that
the matter for judgment be entered in
favor of Christy with regard to defendant
James Woodward on the count of battery
inflicted with an unlawful weapon and
abuse of process, and judgment is entered
in favor of James Woodward on those counts.

and it is ordered

ORDERED, ADJUDGED, and ordered that
the matter for judgment be entered in
favor of Christy with regard to defendant
James Woodward on the count of battery
inflicted with an unlawful weapon.
Christy is a native local woman and
judgment is entered in favor of Christy
and it is ordered

Christy

ORDERED, ADJUDGED, and ordered that

judgment be entered in favor of Yellow Bus Lines, Inc. against James Woodward in the amount of \$1,280.00.